# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 324

THE UNITED STATES OF AMERICA, PETITIONER

vs.

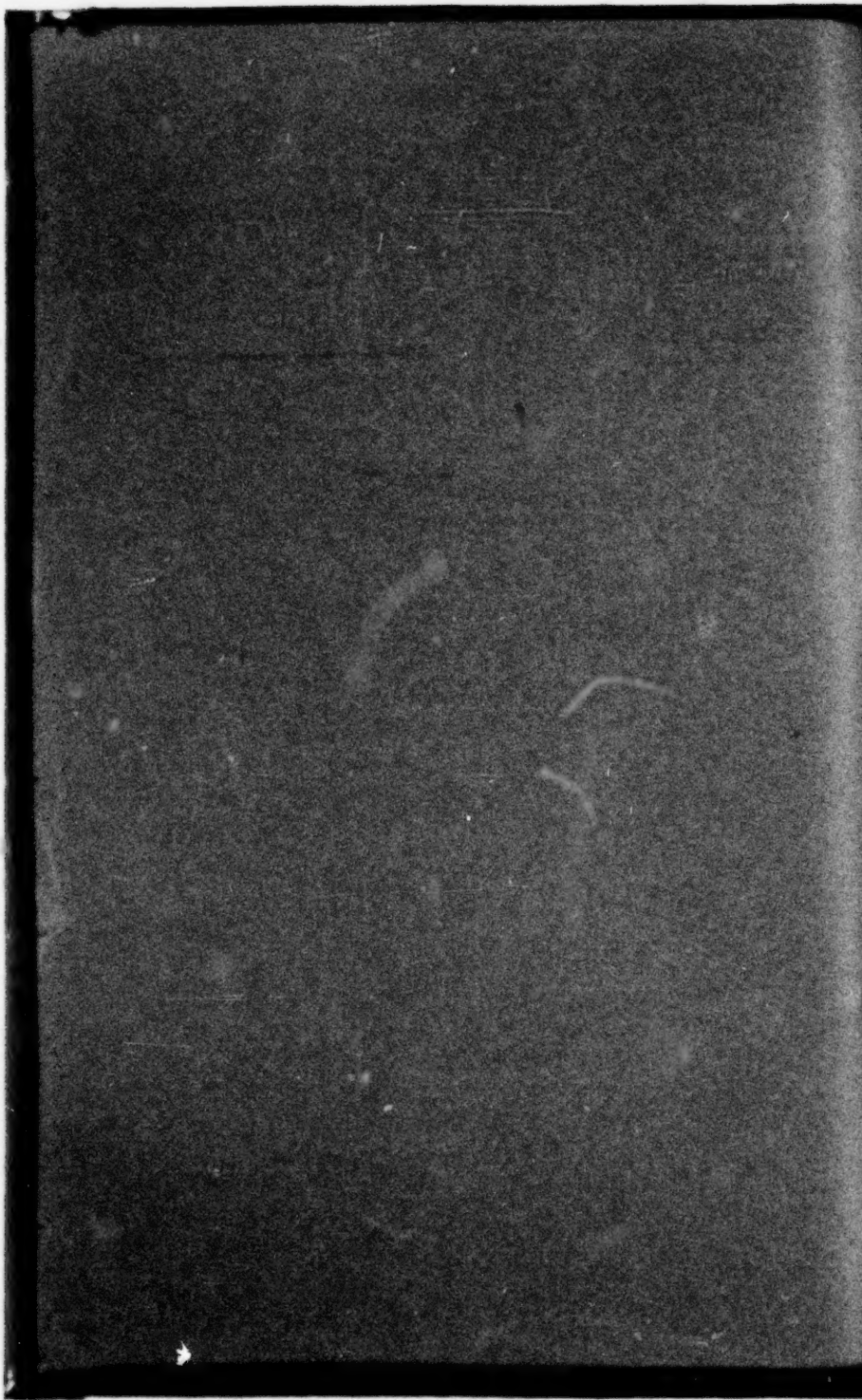
FLORENCE E. WILLIAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 7, 1926

CERTIORARI GRANTED MAY 24, 1926

(32243)



# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1922

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No. 104

## THE UNITED STATES OF AMERICA, PETITIONER

vs.

## FLORENCE E. WILLIAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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INDEX


| | Original | Print |
|---|---|---|
| Proceedings in U. S. Circuit Court of Appeals, Third Circuit | 1 | 1 |
| Caption | 1 | 1 |
| Record from D. C. U. S., Western Pennsylvania | 1 | 1 |
| Docket entries | 1 | 1 |
| Petition | 3 | 1 |
| Affidavit of service | 8 | 4 |
| Affidavit of defense | 9 | 4 |
| Amendments to petition | 10 | 5 |
| Adjusted service certificate | 12 | 6 |
| Record in Veterans' Bureau | 20 | 10 |
| Opinion, Gibson, J | 25 | 13 |
| Decree | 28 | 15 |
| Petition for writ of error | 28 | 15 |
| Order allowing writ of error | 31 | 17 |
| Assignments of error | 31 | 17 |
| Clerk's certificate [omitted in printing] | 32 | 17 |
| Argument and submission [omitted in printing] | 33 | 17 |
| Judgment | 34 | 17 |
| Opinion, Buffington, J | 35 | 18 |
| Clerk's certificate [omitted in printing] | 38 | 19 |
| Order allowing certiorari | 39 | 20 |

1 In United States Circuit Court of Appeals for the Third Circuit

No. 3660

FLORENCE E. WILLIAMS, PLAINTIFF IN ERROR

vs.

UNITED STATES OF AMERICA

Writ of error from the United States Circuit Court of Appeals for the Third Circuit to the District Court of the United States for the Western District of Pennsylvania at No. 3469, Law

In United States District Court

Among the files, records, and proceedings of the District Court of the United States for the Western District of Pennsylvania, at No. 3469, Law, may be found the following:

*Docket entries*

Apr. 23, 1926: Plaintiff's petition of claim against United States filed.

Apr. 23, 1926: Affidavit of service filed.

2 July 22, 1926: Affidavit of defense raising questions of law, filed and entered.

July 27, 1926: Amendments to plaintiff's petition and stipulation of defendant consenting thereto filed.

Mar. 8, 1927: Opinion and decree filed and entered sustaining the demurrer of the United States and dismissing the plaintiff's petition; exceptions noted to plaintiff.

June 6, 1927: Notice of petition for writ of error filed.

June 6, 1927: Assignments of error filed.

June 6, 1927: Petition for writ of error and order allowing same filed.

June 11, 1927: Citation issued.

June 11, 1927: Writ of error awarded.

June 14, 1927: Citation returned showing service thereon and mailed, with writ of error, to clerk of U. S. Circuit Court.

Certificate from the record this 23rd day of June, 1927.

[SEAL.] J. WOOD CLARK, *Clerk*.

3 In United States District Court

*Petition*

Filed April 23, 1926

*To the honorable the judges of said court:*

The petition of Florence E. Williams, the plaintiff herein, respectfully represents:

That she is a citizen of the United States, resident and domiciled in Pittsburgh, in said western district of Pennsylvania.

That plaintiff claims from the defendant a certain sum of money, which, for reasons herein stated, she is not able to liquidate, but which does not exceed fifteen hundred ($1,500.00) dollars, with interest from August 13th, 1925, and bases her claim upon a cause of action, whereof the following is a statement:

First. That the defendant, the United States of America, by and through the Director of the United States Veterans' Bureau (hereinafter designated the director), issued to William C. Williams (hereinafter designated the veteran) upon his application and pursuant to the provisions of the World War adjusted compensation act of Congress of May 19th, 1924, c. 157 (43 Stat. 121), an adjusted service certificate, dated January 1st, 1925, wherein and whereby, as plaintiff has been informed, believes, expects to prove, and therefore avers, the defendant, acting through and by the Director, certified that pursuant to the said act of Congress and in conformity with the laws of the United States, the amount therein named shall become due and payable on the first day of January, 1945, to the veteran, or,
upon the death of the veteran prior to the due date above
4 named, the amount therein stated shall become due and payable to the beneficiary named by the veteran.

The plaintiff avers that the said adjusted service certificate is in the possession of the director; that she has made demand upon him for it or for a true and correct copy thereof; but that he has hitherto failed, neglected, and refused to comply therewith, for which reason plaintiff is unable to make profert of said adjusted service certificate.

Second. That the plaintiff was the wife of the veteran, and is the beneficiary named in the said adjusted service certificate.

Third. That the veteran served in the United States Army during the period of the World War from date of enlistment, some time in 1918, until date of discharge, which was prior to July 1st, 1919. During that period he served some time overseas.

That, by reason of said service, the veteran became entitled to the benefits of the said act of Congress; and he, pursuant thereto, as plaintiff has been informed, believes, expects to prove, and therefore avers, made application some time in 1924 for said benefits, and said application was filed with the Secretary of War, upon receipt of which application, the Secretary of War, pursuant to the provisions of sections 303 and 305 of said act, transmitted it to the director, together with a certificate setting forth (1) that applicant was a veteran; (2) his name and address; (3) the date and place of his birth; and (4) the amount of his adjusted service credit, together
with the facts of records in his department upon which such
5 conclusions were based, and thereafter, the director issued to the veteran the said adjusted service certificate.

Plaintiff has frequently requested and demanded from the director a copy of said certificate, but he has hitherto failed, neglected, and refused to comply therewith, for which reason the

plaintiff is unable to herein aver the exact dates of the veteran's enlistment and discharge, the number of days of service overseas, the number of days of service at home, and, therefore, the amount of the adjusted service credit to which the veteran was entitled.

Fourth. That pursuant to the said act of Congress (section 201) the veteran was entitled to adjusted service credit computed by allowing for each day of active service in excess of sixty (60) days in the military or naval forces of the United States, after April 5th, 1917, and before July 1st, 1919, $1.25 for each day of overseas service and $1.00 for each day of home service.

Fifth. That pursuant to said act of Congress (section 505) the adjusted service certificate should have been of face value equal to the amount in dollars of twenty (20) year endowment insurance that the amount of the said veteran's adjusted service credit, increased by 25%, would purchase at his age on his birthday nearest the date of the certificate, if applied as a net single premium, calculated in accordance with accepted actuarial principles and based upon the American Experience Table of Mortality, and interest at 4% per annum, compounded annually.

Sixth. That the veteran was thirty-one (31) years old on his birthday nearest to January 1st, 1925.

6 Seventh. That the veteran died August 13th, 1925, and thereupon there became immediately due and payable by defendant to the plaintiff, pursuant to said act of Congress (section 501), the amount calculated in the method prescribed by said act of Congress, which amount should have been the face value of the adjusted service certificate issued to the veteran.

Eighth. That plaintiff has been informed by the director that the amount of the face value of the adjusted service certificate which was issued to the veteran is $867.00; but plaintiff is informed, believes, expects to prove, and therefore avers either that the veteran's service entitled him to a larger adjusted service credit than was allowed or that the amount of the face value of the adjusted service certificate has not been properly calculated in accordance with the said act of Congress.

Plaintiff therefore avers and claims that the face value of the adjusted service certificate should be not less than fifteen hundred ($1500.00) dollars, which amount she claims from the defendant, with interest from August 13th, 1925, the date of veteran's death.

Ninth. That plaintiff has filed proof of claim and has complied with all requirements of law and of the director concerning the making and filing of said proof of claim.

Tenth. That plaintiff has frequently demanded payment of the true and correct amount due her as the beneficiary under the said adjusted service certificate; but defendant has hitherto failed, neglected, and refused to do so; hence this suit.

7 Eleventh. That defendant be required to attach to and make part of the affidavit of defense or answer hereto the following:

(a) True copy of the adjusted service certificate.

(b) True copy of the veterans' record, as required by section 305 of the said act of Congress.

(c) True copy of application and certificate, as required by section 303 of the said act of Congress; and

(d) All information relating to the veteran, his record, and service that may be found in the Department of War or in the United States Veterans' Bureau in order that plaintiff and the court may calculate the true amount of said adjusted service certificate to recover which this suit is brought.

Wherefore plaintiff prays for judgment in her favor against defendant for the amount which may be found to be truly and justly due her.

And she will ever pray, etc.

FLORENCE E. WILLIAMS.

WILLIAM KAUFMAN, Esq.,
*206-7 Standard Life Bldg., Pittsburgh, Pa.,*
*Attorney for Plaintiff.*

PITTSBURGH, PA., *April 23, 1926.*

8 [*Duly sworn to; jurat omitted in printing.*]

In United States District Court

*Affidavit of service*

Filed April 23, 1926

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

William Kaufman, being duly sworn according to law, deposes and says that he, on behalf of plaintiff, on April 23, 1926, served an attested copy of the petition filed in this case upon the district attorney of this district, and that on April 23, 1926, he mailed an attested copy of the petition by registered letter to the Attorney General of the United States.

WM. KAUFMAN.

9 Sworn to and subscribed before me this 23rd day of April, 1926.

[SEAL.] B. D. GAMBLE, *Dep. Clerk.*

In United States District Court

*Affidavit of defense raising question of law*

Filed July 22, 1926

STATE OF PENNSYLVANIA,
*County of Allegheny, ss:*

And now comes the defendant, by John D. Meyer, United States Attorney for the Western District of Pennsylvania, who, being duly

sworn, deposes and says that he has a complete defense in the above entitled suit of which the following is a statement:

First. The petitioner or claimant seeks to recover what in reality amounts to a pension and has instituted the case in the District Court pursuant to section 24, paragraph 20, of the Judicial Code, which gives the District Court jurisdiction concurrent with the Court of Claims in all suits against the United States not exceeding $10,000.00 in amount. But under the said section under which the said claimant has brought suit no jurisdiction has been granted the District Courts to hear and determine claims for pensions.

Second. The said petition does not state a cause of action against this defendant within the jurisdiction of this court.

Defendant, therefore, respectfully requests the court to hear
10 and dispose of the question of law so raised, and to dismiss the above entitled case at the cost of the plaintiff.

JOHN D. MEYER.

Sworn and subscribed before me this 22nd day of July, 1926.

[SEAL.] GERTRUDE HORTON BERGER,
*Dep. Clerk U. S. Dist. Ct.*

In United States District Court

*Amendments to petition*

Filed July 27, 1926

And now, July 26, 1926, plaintiff amends petition of claim as follows:

The clause of paragraph on page one (1), immediately prior to paragraph designated "First," to read as follows:

"That plaintiff claims from the defendant the sum of eight hundred and sixty-seven ($867.00) dollars, with interest from August 13th, 1925, and bases her claim upon a cause of action whereof the following is a statement:"

Amend first paragraph by adding thereto the following:

"That after this suit was brought and this petition filed the director prepared and sent to the United States District Attorney of this district for use in this case a photostatic copy of the adjusted service certificate, which copy plaintiff accepts as true and correct and by reference makes it part hereof."

11 Amend third paragraph by adding thereto the following:

"That after this suit was brought and this petition filed the director sent to plaintiff a photostatic copy of the certificate of the Secretary of War to the director, as required by the said act of Congress, showing, inter alia, the record of the veteran; the number of days of home service and number of days of overseas service, to wit, seventy-five (75) days home service between June 12th, 1918, and August 25th, 1918; two hundred and fifty-four (254) days over-

seas service between August 26th, 1918, and May 6th, 1919; and twelve (12) days home service between May 7th, 1919, and May 18th, 1919; that the money value of the computed service (that is, the adjusted service credit) of the veteran was $344.50; that veteran had been honorably discharged; and that, according to the computation of the Secretary of War, the amount of the adjusted service certificate to which the veteran was entitled was $867.10, which photostatic copy plaintiff accepts as true and correct, and by reference hereby makes it a part hereof."

Amend eighth paragraph by eliminating so much thereof as is inconsistent with the above stated amendments.

WM. KAUFMAN,
*906-7 Standard Life Building, Pittsburgh, Pa.,*
*Attorney for Plaintiff.*

And now, July 26, 1926, Ass't U. S. Attorney consents to the making of the foregoing amendments, and stipulates that same may
12 be filed and petition amended accordingly, without verification by plaintiff and without order of court.

W. J. AIKEN,
*Ass't U. S. Attorney.*

In United States District Court

*Adjusted service certificate*

The United States of America

It is hereby certified that pursuant to the World War adjusted compensation act and in conformity with the laws of the United States the amount herein named, eight hundred sixty-seven dollars ($867.00), less any indebtedness including interest lawfully incurred and due hereon, shall become due and payable on the first day of January, 1945, to William C. Williams, A3081035, whose address is 541 Wildwood Street, Verona, Pa., herein referred to as the veteran, or, upon the death of the veteran prior to the due date above named, the amount hereinabove stated shall become due and payable to the beneficiary named by the veteran, except that if such beneficiary dies before the veteran and no new beneficiary is named, or if the beneficiary in the first instance has not been named, then the amount as stated will become due and payable to the estate of the veteran.

This certificate is issued by the Director of the United States Veterans' Bureau, hereinafter referred to as the director, in compliance with section 501 of Title V of the World War adjusted compensation act and is subject to all the provisions of that act and regulations prescribed thereunder from time to time by the director.

13 The amount due under this certificate will be paid upon presentation of the certificate with form "Demand for payment" appearing on the reverse side hereof, duly executed and certi-

fied and accompanied by such proof of identity and right to receive payment as may be prescribed, to the director, in the city of Washington, District of Columbia, or at such agency or agencies as the director may designate, and in accordance with such rules and regulations as the director may prescribe. Execution of form "Demand for payment" is not a requirement for payment to an incorporated bank or trust company on account of loans, as authorized in section 502 of Title V of the World War adjusted compensation act.

The veteran may, with the approval of the director, change the beneficiary of this certificate. Change of beneficiary is subject to such regulations as the director may prescribe.

Neither this certificate nor any right conferred herein, or incidental thereto, shall be negotiable, or assignable, or serve as security for any loan except as provided in section 502 of Title V of the World War adjusted compensation act here set forth:

SEC. 502. (a) A loan may be made to a veteran upon his adjusted service certificate only in accordance with the provision of this section.

(b) Any national bank, or any bank or trust company incorporated under the laws of any State, Territory, possession, or the District of Columbia (hereinafter in this section called "bank") is authorized, after the expiration of two years after the date of the certifi-
14 cate, to loan to any veteran upon his promissory note secured by his adjusted service certificate (with or without the consent of the beneficiary thereof) any amount not in excess of the loan basis (as defined in subdivision (g) of this section) of the certificate. The rate of interest charged upon the loan by the bank shall not exceed, by more than 2 per centum per annum, the rate charged at the date of the loan for the discount of 90-day commercial paper under section 13 of the Federal reserve act by the Federal reserve bank for the Federal reserve district in which the bank is located. Any bank holding a note for a loan under this section secured by a certificate (whether the bank originally making the loan or a bank to which the note and certificate have been transferred) may sell the note to, or discount or rediscount it with, any bank authorized to make a loan to a veteran under this section and transfer the certificate to such bank. Upon the indorsement of any bank, which shall be deemed a waiver of demand, notice, and protest by such bank as to its own indorsement exclusively, and subject to regulations to be prescribed by the Federal Reserve Board, any such note secured by a certificate and held by a bank shall be eligible for discount or rediscount by the Federal reserve bank for the Federal reserve district in which the bank is located. Such note shall be eligible for discount or rediscount whether or not the bank offering the note for discount or rediscount is a member of the Federal Reserve System and whether or not it acquired the note in the first instance from the veteran or acquired it by transfer upon the indorsement of any other bank. Such note shall not be eligible for discount or rediscount unless it has at the

time of discount or rediscount a maturity not in excess of nine
15 months exclusive of days of grace. The rate of interest charged by the Federal reserve bank shall be the same as that charged by it for the discount or rediscount of 90-day notes drawn for commercial purposes. The Federal Reserve Board is authorized to permit, or on the affirmative vote of at least five members of the Federal Reserve Board to require, a Federal reserve bank to rediscount for any other Federal reserve bank notes secured by a certificate. The rate of interest for such rediscount shall be fixed by the Federal Reserve Board. In case the note is sold, discounted, or rediscounted the bank making the transfer shall promptly notify the veteran by mail at his last known post-office address.

(c) If the veteran does not pay the principal and interest of the loan upon its maturity, the bank holding the note and certificate may, at any time after maturity of the loan but not before the expiration of six months after the loan was made, present them to the director. The director may, in his discretion, accept the certificate and note, cancel the note (but not the certificate), and pay the bank, in full satisfaction of its claim, the amount of the unpaid principal due it and the unpaid interest accrued, at the rate fixed in the note, up to the date of the check issued to the bank. The director shall restore to the veteran, at any time prior to its maturity, any certificate so accepted upon receipt from him of an amount equal to the sum of (1) the amount paid by the United States to the bank in cancellation of his note, plus (2) interest on such amount from the time of such payment to the date of such receipt, at 6 per centum per annum, compounded annually.

(d) If the veteran fails to redeem his certificate from the
16 director before its maturity, or before the death of the veteran, the director shall deduct from the face value of the certificate (as determined in section 501) an amount equal to the sum of (1) the amount paid by the United States to the bank on account of the note of the veteran, plus (2) interest on such amount from the time of such payment to the date of maturity of the certificate or of the death of the veteran, at the rate of 6 per centum per annum, compounded annually, and shall pay the remainder in accordance with the provisions of section 501.

(e) If the veteran dies before the maturity of the loan, the amount of the unpaid principal and the unpaid interest accrued up to the date of his death shall be immediately due and payable. In such case, or if the veteran dies on the day the loan matures or within six months thereafter, the bank holding the note and certificate shall, upon notice of the death, present them to the director, who shall thereupon cancel the note (but not the certificate) and pay to the bank, in full satisfaction of its claim, the amount of the unpaid principal and unpaid interest, at the rate fixed in the note, accrued up to the date of the check issued to the bank; except that if, prior to the payment, the bank is notified of the death by the director and fails to present the certificate and note to the director within fifteen

days after the notice, such interest shall be only up to the fifteenth day after such notice. The director shall deduct the amount so paid from the face value (as determined under section 501) of the certificate and pay the remainder in accordance with the provisions of section 501.

(f) If the veteran has not died before the maturity of
17 the certificate, and has failed to pay his note to the bank or the Federal reserve bank holding the note and certificate, such bank shall, at the maturity of the certificate, present the note and certificate to the director, who shall thereupon cancel the note (but not the certificate) and pay to the bank, in full satisfaction of its claim, the amount of the unpaid principal and unpaid interest, at the rate fixed in the note, accrued up to the date of the maturity of the certificate. The director shall deduct the amount so paid from the face value (as determined in section 501) of the certificate and pay the remainder in accordance with the provisions of section 501.

(g) The loan basis of any certificate at any time shall, for the purpose of this section, be an amount which is not in excess of 90 per centum of the reserve value of the certificate on the last day of the current certificate year. The reserve value of a certificate on the last day of any certificate year shall be the full reserve required on such certificate, based on an annual level net premium for twenty years and calculated in accordance with the American Experience Table of Mortality and interest at 4 per centum per annum, compounded annually.

(h) No payment upon any note shall be made under this section by the director to any bank, unless the note when presented to him is accompanied by an affidavit made by an officer of the bank which made the loan, before a notary public or other officer designated for the purpose by regulation of the director, and stating that such bank has not charged or collected, or attempted to charge or collect, directly or indirectly, any fee or other compensation (except interest as
18 authorized by this section) in respect of any loan made under this section by the bank to a veteran. Any bank which, or director, officer, or employee thereof who, does so charge, collect, or attempt to charge or collect any such fee or compensation shall be liable to the veteran for a penalty of $100, to be recovered in a civil suit brought by the veteran. The director shall upon request of any bank or veteran furnish a blank form for such affidavit.

Any negotiation, assignment, or loan made in violation of any provision of the foregoing section of the law shall be void.

The loan value of this certificate increases yearly after the second year. Under the loan table shown below one dollar is taken as a basis and the loan value thereof is shown opposite the yearly periods. To find the loan value of this certificate at any time multiply the face value by the loan value on one dollar shown opposite the number of years corresponding to the number of years that have elapsed from the effective date of the certificate.

TABLE OF LOAN VALUES ON THIS CERTIFICATE

| 32 years | Loan basis per $1.00 | Years | Loan basis per $1.00 |
|---|---|---|---|
| 2 | .08793 | 11 | .43550 |
| 3 | .11959 | 12 | .48109 |
| 4 | .15352 | 13 | .53584 |
| 5 | .18861 | 14 | .58919 |
| 6 | .22532 | 15 | .64522 |
| 7 | .26375 | 16 | .70409 |
| 8 | .30398 | 17 | .76592 |
| 9 | .34612 | 18 | .83123 |
| 10 | .39025 | 19 | .89999 |

19 Neither this certificate nor any sum payable to a veteran, or to his estate, or to any beneficiary under this certificate, nor proceeds of any loan made on this certificate, shall be subject to attachment, levy, or seizure under any legal or equitable process, or to National or State taxation.

All rights under this certificate are effective from the first day of January, 1925.

Age 32.

Given at the central office of the United States Veterans' Bureau, in the city of Washington, District of Columbia, this first day of January, one thousand nine hundred and twenty-five.

No. 2634866.

[SEAL.]

FRANK T. HINES,
*Director, United States Veterans' Bureau.*

O. W. CLARK,
*Chief, Adjusted Compensation Division.*

20 In the United States District Court

*Copy of veteran's record in U. S. Veterans' Bureau*

A. APPLICATION

Item 10 will not be filled out in case of dependent making application

Application number 3081035

10. In accordance with the statements made by me in this application, I hereby apply for the benefits to which I may be entitled under the provisions of the World War adjusted compensation act, and designate the following-named person as my beneficiary under the provisions of said act:

Name (Mr., Mrs., or Miss), (first) Florence, (middle) Ethel, (last) Williams. (Relationship of beneficiary) wife.

Address of beneficiary (house number), 541, (street) Wildwood St., (city) Verona, (county) Allegheny, (State) Pa.

Signature of veterans, (first) William, (middle) Charles, (last) Williams.

11. Fingerprint of right hand of veteran (plain imprint of four fingers taken at the same time).

12. (See instructions for this item.)

(a) (Name of veteran—last) Williams, (first) William, (middle) C.

(b) (Serial number of veteran) 3115963.

(c) Address of veteran) 541 Wildwood St., Verona, Pa.

21 (d) (Date of birth of veteran) Oct. 20, 1892, (place of birth of veteran) Kelton, Penna.

(e) (Rank and organization at date of discharge) Private, Co. D, 538 Engineers.

[Extract from Title VII, World War adjusted compensation act]

Penalty for making false or fraudulent statement in application

SEC. 702. Whoever knowingly makes any false or fraudulent statement of a material fact in any application, certificate, or document under the provisions of Titles III, IV, V, or VI, or of any regulation made under any such title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned for not more than five years, or both.

c3—8781.

160 A. G. O.
Jan. 12, 1925
Adj. Comp. Br.

22 B. RECORD

[Original]

Williams (Last name) William (First name) C. (Middle name) Application No. 3081035

Pvt. (Rank) Co. D, 538 Engrs. (Organization) 3115963 (Serial No.)

The service or other official records of the above-named veteran that are now on file in this department show the following facts:

Service after April 5, 1917, and before July 1, 1919:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Home | Jun. 12, 1918, to Aug. 25, 1918 = 75 days | | | | | | |
| Exception ( ) | Sec. 202, 191 | to | 191 | = | days | | |
| Exception ( ) | Sec. 202, 191 | to | 191 | = | days | | |
| Other " | 191 | to | 191 | = | days | (15 days @ $1.00 = $15.00) | |
| Overseas | Aug. 26, 1918, to May 6, 1919 = 254 days | | | | | | |
| Exception ( ) | Sec. 202, 191 | to | 191 | = | days | | |
| 23 Exception ( ) | Sec. 202, 191 | to | 191 | = | days—60 | | |
| Other " | 191 | to | 191 | = | days | (254 days @ $1.25 = $317.50) | |
| Home | May 7, 1919, to May 18, 1919 = 12 days | | | | | | |
| Exception ( ) | Sec. 202, 191 | to | 191 | = | days | | |
| Exception ( ) | Sec. 202, 191 | to | 191 | = | days | | |
| Other " | 191 | to | 191 | = | days | (12 days @ $1.00 = $12.00) | |

( )ped RK Examined MCM Money value of computed service of veteran, $344.50

3 5 Computed fo-w Examined CWC.

There are no exceptions under World War adjusted compensation act, in the case of this veteran, other than those set forth in this certificate.

Remarks.....

24 C. CERTIFICATE

11.32 Auth for face Age 32.
855.78 Value of Cert. $867 By NYIrlinent.
867.10* Cert. No. 2034866 Issued 1-1-25.

Beneficiary Williams, Mrs. Florence, Ethel, Wife
(Last name) (First name) (Middle name) (Relationship)

Address 541 Wildwood St. Verona Pa.
(House number) (Street) (City) (County) (State)

I certify that the person first named on the face of the certificate is the applicant and is a veteran; that he was discharged under honorable conditions; that he was born on Oct. 20, 1892, at Kelton, Pa.; that his address is 541 Wildwood St., Verona, Pa.; that the date of his application is Dec. 31, 1924; that the amount of adjusted service credit due veteran is $344.50; and that the facts hereinbefore stated are the facts of record upon which the conclusions hereinbefore reached are based.

JOHN W. WEEKS,
*Secretary of War.*

Stamped:
Official:
Robert C. Davis,
Major General,
The Adjutant General.
Stamped:
War Dept.
Feb. 4, 1925.
Washington, D. C.
25 Stamped
Received
Feb. 6, 1925
Adj. Comp. Div.

In United States District Court

*Opinion*

Filed March 8, 1927

GIBSON, District Judge.

The plaintiff has sought to avail herself of that part of the jurisdiction of this court concurrent with that of the Court of Claims. Under the provisions of the World War adjusted compensation act of May 19, 1924 (43 Stat. 121), an adjusted service certificate was issued to William C. Williams. The beneficiary under that certificate was the plaintiff. William C. Williams died August 5, 1925, and thereafter the plaintiff made due demand upon the Director of

the United States Veterans' Bureau for payment of the amount contemplated in said adjusted service certificate. The director has refused to make such payment, and plaintiff has filed her petition for the purpose of recovering the amount provided by the certificate.

The United States attorney, on behalf of the United States, has demurred to the petition, the basis of his demurrer being the allegation that the act of Congress which conferred upon this court limited concurrent jurisdiction with the Court of Claims expressly denied jurisdiction in regard to pension claims.

26 Upon argument upon the demurrer plaintiff contended that the claim set forth in her petition was not the claim for a pension such as was contemplated in the act of Congress conferring jurisdiction upon this court. It was forcibly pointed out that while the ordinary pension act provides for a regular payment at stated intervals to the pensioner and ceases with the death of the pensioner, the act under which this certificate issued provides for the payment of a definite sum at the end of twenty years; or, in case of death of the veteran prior to the expiration of that time, the amount is to be paid to the beneficiary, or, for lack of a beneficiary, to the estate of the veteran. We have given this contention careful consideration, but find ourselves unable to agree to its soundness. True, the act does not describe the amount awarded as a pension, but it has thrown around it all the ordinary provisions relating to a pension and the amount awarded is a gratuity plainly in the nature of a pension. When the act which conferred jurisdiction upon the Court of Claims is compared with that which confers jurisdiction upon this court, it seems quite plain that Congress intended to allow suit to be brought against it upon practically all claims except upon gratuities awarded by it, and that such gratuities were to be distributed in accordance with the regulations of the proper department of the United States and the rulings of its proper officers. Each of these acts of Congress conferring jurisdiction, it will be noted, excepts jurisdiction in the matter of pensions. In making the foregoing statement we do not wish to be understood as saying that any claimant under the adjusted compensation act or any other pension act is at the mercy of any arbitrary or capricious ruling of a departmental officer. In such case, in our judgment, a plain remedy exists.

27 It is urged on behalf of the petitioner that whatever might have been the nature of the original claim of William C. Williams, when the adjusted service certificate was actually issued it became, in itself, an obligation of the United States, and that a claim based upon such obligation was not a claim for pension. A case similar to the instant case in facts and containing such a claim was Cole vs. United States, 29 Ct. of Claims Rep. 47. In that case a certificate had been issued to the claimant. It was later called in and revoked. The plaintiff's counsel contended that the action was not to recover a pension but to recover an allowance under the pension certificate duly issued. The court declared itself unable to make such a distinction, holding that if the plaintiff should recover it would be

for a sum allowed under the pension laws upon which the pension certificate was necessarily based.

See also Gordon's case, 26 Ct. of Claims Rep. 307. In that case a pension had been granted by special act of Congress. The Commissioner of Pensions stopped payment of the pension and requested Congress to repeal the act. Congress had not acted upon this request at the time suit was brought. The court held that it was without jurisdiction.

Being of the opinion that this court is without jurisdiction to entertain the plaintiff's petition, the demurrer of the defendant must be sustained and the petition dismissed.

28 In United States District Court

FLORENCE E. WILLIAMS
vs.
UNITED STATES OF AMERICA
No. 3469 Law

*Decree*

And now, to wit, March 8, 1927, the demurrer of the United States to the petition filed herein having come on to be heard, after argument of counsel, upon consideration thereof, it appearing that this court has no jurisdiction in the premises, it is hereby ordered, adjudged, and decreed that the demurrer of the United States to the petition be, and the same hereby is, sustained, and said petition hereby is dismissed.

Per curiam,

G.

Plaintiff excepts; and at her instance, exception noted and bill sealed.

ROBERT M. GIBSON. [SEAL.]
*District Judge.*

In United States District Court

*Petition for Writ of Error*

Filed June 6, 1927

To the Hon. ROBERT M. GIBSON, JUDGE OF THE SAID COURT:

The petition of Florence E. Williams, plaintiff, respectfully represents:

29 First. That she desires to sue out a writ of error from the Circuit Court of Appeals of the Third Circuit for the purpose of having reviewed the judgment of this court, entered March 8, 1927, in the above-entitled case, as follows:

"And now, to wit, March 8, 1927, the demurrer of the United States to the petition filed herein having come on to be heard, after argu-

ment of counsel, upon consideration thereof, it appearing that this court has no jurisdiction in the premises, it is hereby ordered, adjudged, and decreed that the demurrer of the United States to the petition be, and the same hereby is, sustained, and said petition hereby is dismissed."

Second. That petitioner is a citizen of the United States and entitled to prosecute a writ of error to the Circuit Court of Appeals in this case; but, because of poverty, she is unable to pay the fees and costs of a writ of error or to give security therefor.

Third. That petitioner believes that she is entitled to the redress for which she brought this suit upon the cause of action set forth in her petition of claim; that by the judgment of this court, as above set forth, she will be deprived of such redress, and thereby a great injustice will be done to her; and that the ground of her appeal is that she believes that this court has erred in entering judgment against her, as aforesaid.

Wherefore, petitioner prays your honor to allow a writ of error in this case without her being required to prepay the fees or costs or to give security therefor.

30 And she will ever pray, etc.

FLORENCE E. WILLIAMS,
By WM. KAUFMAN,
*Attorney.*

WILLIAM KAUFMAN, Esq.,
*307-7 Standard Life Building, Pittsburgh, Pa.,*
*Attorney for Plaintiff.*

WESTERN DISTRICT OF PENNSYLVANIA, ss:

William Kaufman, being duly sworn according to law, deposes and says that he is the attorney for the petitioner above named, and makes this affidavit and has signed the foregoing petition for and on her behalf; that she has frequently declared to deponent that she desired to appeal from the judgment mentioned in the foregoing petition, and retained deponent as her attorney therein; that deponent has recently been unable to find the petitioner, although he has made diligent search for her, and that is the reason why petitioner has not signed the petition or made this affidavit in person; that deponent knows that petitioner is unable, because of poverty, to prepay fees and costs of a writ of error or to give security therefor; and that petitioner is appealing not merely for the purpose of delay or frivolously, but because she believes that injustice has been done to her by the said judgment which should be remedied; and that the averments contained in the petition and in this affidavit are true.

WM. KAUFMAN.

Sworn to and subscribed the 6th day of June, 1927.

GERTRUDE HORTON BERGER,
*Dep. Clerk U. S. Dist. Court.*

31 In United States District Court

*Order allowing appeal*

And now, to wit, June 6, 1927, the foregoing and within petition presented in open court; and, upon consideration thereof, I hereby certify that in the opinion of the court the writ of error is being taken in good faith; and it is ordered, adjudged, and decreed that the prayer of the petition be, and it is hereby, granted; that the writ of error be, and is hereby, allowed; and the plaintiff in error shall not be required to prepay the fees or costs thereof or to give security therefor.

ROBERT M. GIBSON,
*District Judge.*

In United States District Court

*Assignment of error*

And now, June 6, 1927, comes plaintiff in error and assigns the following for error, viz:

That the court below erred in entering judgment as follows:

"And now, to wit, March 8, 1927, the demurrer of the United States to the petition filed herein having come on to be heard, after argument of counsel, upon consideration thereof, it appearing that this court has no jurisdiction in the premises, it is hereby ordered, adjudged, and decreed that the demurrer of the United States to the petition be, and the same is hereby, sustained, and said petition is hereby dismissed.

"Per Curiam,

"G."

32 "Plaintiff excepts, and at her instance exception noted and bill sealed.

"(Signed) ROBERT M. GIBSON, [SEAL.]
"*District Judge.*"

[Clerk's certificate to foregoing transcript omitted in
33 printing.]

[Minute entry of argument and submission, Jan. 10, 1928, omitted in printing.]

34 [Title omitted.]

In United States Circuit Court of Appeals

*Judgment filed Jan. 10, 1928*

In error to the District Court of the United States, for the Western District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, the suit reinstated, and the cause remanded for further proceedings.

Per curiam.

BUFFINGTON, *Circuit Judge.*

PHILADELPHIA, January 10, 1928.

[File indorsement omitted.]

35 In United States Circuit Court of Appeals

[Title omitted.]

*Opinion filed Jan. 10, 1928*

Before Buffington, Woolley, and Davis, Circuit Judges.

BUFFINGTON, C. J.

In pursuance of section 501 of the act of Congress entitled "An act to provide adjusted compensation for veterans of the World War and for other purposes," the Director of the United States Service Bureau duly issued and delivered to William C. Williams certificate A-3081035. Such certificate provided that "in conformity with the laws of the United States, the amount herein named, eight hundred sixty-seven dollars ($867.00), less any indebtedness including interest, lawfully incurred and due hereon, shall become due and payable on the first day of January, 1945, to William C. Williams——— or upon the death of the veteran prior to the date above named, the amount hereinabove stated shall become due and payable to the beneficiary named by the veteran." It further provided "the amount due under this certificate will be paid upon presentation of the certificate with form 'Demand for payment' appearing on the reverse side hereof, duly executed and certified and accompanied by such proof of identity and right to receive payment as may be prescribed, to the director," etc. The certificate further specified its increasing loan value from year to year, provided how loans might be made upon it by banks or trust companies, that it was immune from seizure by legal process and that "all rights under this certificate are effective from the first day of January, 1925." It will be noted also that by sec. 505 of the act a fund was created and set apart for the payment of these certificates.

36 From the above it will be seen that, though issued by the Government and in form called a certificate, in substance and effect it was a paid-up endowment life insurance policy for $867.00, payable to the insured in 1945 if living and to his beneficiary or estate, as the case might be, in case of his death prior thereto. Williams died August 13, 1925, and his wife, Florence E. Williams, his named beneficiary, duly made claim from the United States for the amount specified in the certificate. Payment was refused, and thereon the widow and beneficiary brought this suit in the United States District Court for the Western District of Pennsylvania, and the United States filed an affidavit of defense pursuant to the Pennsylvania pro-

cedure act, asserting that the court had no jurisdiction in the case. This being in effect a demurrer, the above-stated facts are admitted. On hearing, the court sustained the Government's contention, saying, "True, the act does not describe the amount awarded as a pension, but it has thrown around it all the ordinary provisions relating to a pension, and the amount awarded is a gratuity plainly in the nature of a pension. When the act which conferred jurisdiction upon the Court of Claims is compared with that which confers jurisdiction upon this court, it seems quite plain that Congress intended to allow suit to be brought against it upon practically all claims except upon gratuities awarded by it, and that such gratuities were to be distributed in accordance with the regulations of the proper department of the United States and the rulings of its proper officers. Each of these acts of Congress conferring jurisdiction, it will be noted, excepts jurisdiction in the matter of pensions."

From a decree dismissing the case, Mrs. Williams took this appeal, and the sole question before us is: Had the court below jurisdiction of her suit? We are of opinion it had. This suit is not brought to obtain a pension or gratuity which the United States had provided generally for persons in a named class, of which the plaintiff's decedent was a member, but to enforce an obligation which the United States had entered into formally and directly with the plaintiff's decedent and, through him, with her, the named beneficiary. Whether the certificate evidencing the undertaking of the United States is based on a contractual or a moral obligation is not a matter of present concern in view of the fact that the United States voluntarily recognized the obligation, and, on the decedent's proof of services rendered, formally and unconditionally assumed it.

37 Whatever the right or claim of Williams was in name, the Government, in pursuance of statutory power, issued and delivered to him paid-up insurance evidenced by the certificate and promised to pay it, upon the happening of several events, one of which has now occurred. With the facts as they admittedly are by this demurrer the suit is simply against the United States upon its undertaking to pay money to the beneficiary. As this undertaking is not shown by the legislative history leading up to the enactment of the statute under which it was authorized or by the terms of the statute itself to be a pension, we can not hold that the Government's obligation, as indicated by the certificate, running to the grantee's beneficiary as well as to the grantee himself, is a pension. Accordingly, being for a sum less than $10,000, the United States granted jurisdiction to the district court to entertain this action.

So holding, the decree dismissing this suit is vacated, the same reinstated, and the cause remanded for proceedings in due course.

[File indorsement omitted.]

38 [Clerk's certificate to foregoing transcript omitted in printing.]

39 Supreme Court of the United States

*Order allowing certiorari*

Filed May 14, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○

# INDEX


| | Page |
|---|---|
| Petition: | |
| Questions presented | 1 |
| Statutes involved | 2 |
| Statement of the case | 2 |
| Adjusted service certificate | 4 |
| Specification of errors | 13 |
| Reasons for granting the writ | 13 |
| Brief: | |
| Opinion below | 15 |
| Jurisdiction | 15 |
| Statement | 15 |
| Argument | 15 |
| Appendix | 20 |


## CITATIONS


| | |
|---|---|
| *United States* v. *Hall*, 98 U. S. 343 | 16 |
| Judicial Code, sec. 24, par. 20; U. S. C. title 28, sec. 41, par. 20 | 2 |
| World War adjusted compensation act (act of May 19, 1924, c. 157, 43 Stat. 121): | |
| Title II, sec. 201; U. S. C. title 38, sec. 901 | 20 |
| Title III, sec. 301; U. S. C. title 38, sec. 611 | 20 |
| Sec. 302 (a); U. S. C. title 38, sec. 612 | 21 |
| Sec. 303 (a), (b); U. S. C. title 38, sec. 613 | 21 |
| Sec. 308; U. S. C. title 38, sec. 618 | 21 |
| Sec. 309; U. S. C. title 38, sec. 619 | 22 |
| Sec. 310, as added by the act of July 3, 1926, c. 751, sec. 4 (b); 44 Stat. 826, 828; U. S. C. App. title 38, sec. 620 | 16, 25 |
| Title IV, sec. 401; U. S. C. title 38, sec. 631 | 22 |
| Sec. 402; U. S. C. title 38, sec. 632 | 22 |
| Title V, sec. 501; U. S. C. title 38, sec. 641 | 22 |
| Sec. 502; U. S. C. title 38, sec. 642 | 18, 24 |
| Sec. 505; U. S. C. title 38, sec. 645 | 24 |
| Sec. 506; U. S. C. title 38, sec. 646 | 24 |
| Sec. 507; U. S. C. title 38, sec. 647 | 25 |
| Title VI, sec. 601 (a); U. S. C. title 38, sec. 661 | 25 |

# In the Supreme Court of the United States

OCTOBER TERM, 1927

No. ———

UNITED STATES OF AMERICA, PETITIONER,

*v.*

FLORENCE E. WILLIAMS

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF

The United States of America prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Third Circuit entered in the above case on January 10, 1928 (R. 33), reversing the judgment of the District Court of the United States for the Western District of Pennsylvania.

### QUESTION PRESENTED

The question presented in this case is whether a District Court of the United States has jurisdiction under Paragraph 20 of Section 24 of the Judicial Code of a suit against the United States brought by a beneficiary claiming under an adjusted service

certificate issued pursuant to the World War Adjusted Compensation Act (Act of May 19, 1924, c. 157, 43 Stat. 121) to recover the amount of money provided for in such certificate.

## STATUTES INVOLVED

Paragraph 20 of Section 24 of the Judicial Code gives to the District Courts original jurisdiction—

> concurrent with the Court of Claims of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable * * * *Provided, however*, That nothing in this paragraph shall be construed as giving to either the district courts or the Court of Claims jurisdiction * * * to hear and determine claims for pensions * * *.

The pertinent provisions of the World War Adjusted Compensation Act (c. 157, 43 Stat. 121) and of the Act of July 3, 1926 (c. 751, 44 Stat. 826), amendatory thereof, are set forth in the appendix.

## STATEMENT OF THE CASE

On April 23, 1926, respondent filed her petition in the District Court of the United States for the

Western District of Pennsylvania (R. 3) and on July 22, 1926, the Government filed its affidavit of defense raising questions of law (R. 9). On July 27, 1926, respondent filed certain amendments to her petition (R. 10), the Government consenting to the filing thereof without an order of court (R. 11, 12).

The District Court sustained the Government's affidavit of defense, which under the Pennsylvania practice is substantially a demurrer, and dismissed the suit for lack of jurisdiction. (R. 28.) Respondent procured a writ of error and upon a hearing thereof the Circuit Court of Appeals for the Third Circuit reversed the judgment of the District Court, held that the District Court had jurisdiction, and remanded the case for further proceedings. (R. 33–35.)

The respondent alleged in her petition, as amended, that the United States, through the Director of the Veterans' Bureau, issued to William C. Williams upon his application and pursuant to the provisions of the World War Adjusted Compensation Act, an adjusted-service certificate dated January 1, 1925, wherein and whereby the United States certified that pursuant to said Act the amount therein named should become due and payable on the first day of January, 1945, to the veteran, or, upon the death of the veteran prior to the due date above named, the amount therein stated should become due and payable to the beneficiary named by the veteran (R. 3–4); that said certificate

was in the possession of the Director of the Veterans' Bureau but he had forwarded a photostatic copy thereof to the United States District Attorney for use in this case, and that a copy thereof was attached to the petition (R. 10).

The copy of said certificate attached to the petition is contained in the record at pages 12–19, and is as follows:

ADJUSTED SERVICE CERTIFICATE

THE UNITED STATES OF AMERICA

IT IS HEREBY CERTIFIED that pursuant to The World War Adjusted Compensation Act and in conformity with the laws of the United States, the amount herein named, Eight Hundred Sixty-seven Dollars, ($867.00), less any indebtedness including interest, lawfully incurred and due hereon, shall become due and payable on the first day of January, 1945, to WILLIAM C. WILLIAMS, A3081035, whose address is 541 Wildwood street, Verona, Pa., herein referred to as the veteran, or, upon the death of the veteran prior to the due date above named, the amount hereinabove stated shall become due and payable to the beneficiary named by the veteran, except that if such beneficiary dies before the veteran and no new beneficiary is named, or if the beneficiary in the first instance has not been named, then the amount as stated will become due and payable to the estate of the veteran.

This Certificate is issued by the Director of the United States Veterans Bureau, here-

inafter referred to as the Director, in compliance with Section 501 of Title V of The World War Adjusted Compensation Act and is subject to all the provisions of that Act and regulations prescribed thereunder from time to time by the Director.

The amount due under this Certificate will be paid upon presentation of the Certificate with form "Demand for Payment" appearing on the reverse side hereof, duly executed and certified and accompanied by such proof of identity and right to receive payment as may be prescribed, to the Director, in the City of Washington, District of Columbia, or at such agency or agencies as the Director may designate, and in accordance with such rules and regulations as the Director may prescribe. Execution of form "Demand for Payment" is not a requirement for payment, to an incorporated bank or trust company on account of loans, as authorized in Section 502 of Title V of The World War Adjusted Compensation Act.

The veteran may, with the approval of the Director, change the beneficiary of this Certificate. Change of beneficiary is subject to such regulations as the Director may prescribe.

Neither this Certificate nor any right conferred herein, or incidental thereto, shall be negotiable, or assignable, or serve as security for any loan except as provided in Section 502 of Title V of The World War Adjusted Compensation Act here set forth:

SEC. 502. (a) A loan may be made to a veteran upon his adjusted service certificate only in accordance with the provision of this section.

(b) Any national bank, or any bank or trust company incorporated under the laws of any State, Territory, possession or the District of Columbia (hereinafter in this section called "bank"), is authorized, after the expiration of two years after the date of the certificate, to loan to any veteran upon his promissory note secured by his adjusted service certificate (with or without the consent of the beneficiary thereof) any amount not in excess of the loan basis (as defined in subdivision (g) of this section) of the certificate. The rate of interest charged upon the loan by the bank shall not exceed, by more than 2 per centum per annum, the rate charged at the date of the loan for the discount of 90-day commercial paper under Section 13 of the Federal Reserve Act by the Federal reserve bank for the Federal reserve district in which the bank is located. Any bank holding a note for a loan under this section secured by a certificate (whether the bank originally making the loan or a bank to which the note and certificate have been transferred) may sell the note to, or discount or rediscount it with, any bank authorized to make a loan to a veteran under this section and transfer the certificate to such bank. Upon the indorsement of any bank, which shall be deemed a waiver of demand, notice,

and protest by such bank as to its own indorsement exclusively, and subject to regulations to be prescribed by the Federal Reserve Board, any such note secured by a certificate and held by a bank shall be eligible for discount or rediscount by the Federal reserve bank for the Federal reserve district in which the bank is located. Such note shall be eligible for discount or rediscount whether or not the bank offering the note for discount or rediscount is a member of the Federal Reserve System and whether or not it acquired the note in the first instance from the veteran or acquired it by transfer upon the indorsement of any other bank. Such note shall not be eligible for discount or rediscount unless it has at the time of discount or rediscount a maturity not in excess of nine months exclusive of days of grace. The rate of interest charged by the Federal reserve bank shall be the same as that charged by it for the discount or rediscount of 90-day notes drawn for commercial purposes. The Federal Reserve Board is authorized to permit, or on the affirmative vote of at least five members of the Federal Reserve Board to require, a Federal reserve bank to rediscount, for any other Federal reserve bank, notes secured by a certificate. The rate of interest for such rediscount shall be fixed by the Federal Reserve Board. In case the note is sold, discounted, or rediscounted the bank making the transfer shall promptly notify the veteran by mail at his last known post-office address.

(c) If the veteran does not pay the principal and interest of the loan upon its maturity, the bank holding the note and certificate may, at any time after maturity of the loan but not before the expiration of six months after the loan was made, present them to the Director. The Director may, in his discretion, accept the certificate and note, cancel the note (but not the certificate), and pay the bank, in full satisfaction of its claim, the amount of the unpaid principal due it, and the unpaid interest accrued, at the rate fixed in the note, up to the date of the check issued to the bank. The Director shall restore to the veteran, at any time prior to its maturity, any certificate so accepted, upon receipt from him of an amount equal to the sum of (1) the amount paid by the United States to the bank in cancellation of his note, plus (2) interest on such amount from the time of such payment to the date of such receipt, at 6 per centum per annum, compounded annually.

(d) If the veteran fails to redeem his certificate from the Director before its maturity, or before the death of the veteran, the Director shall deduct from the face value of the certificate (as determined in section 501) an amount equal to the sum of (1) the amount paid by the United States to the bank on account of the note of the veteran, plus (2) interest on such amount from the time of such payment to the date of maturity of the certificate or of the death of the veteran, at the rate of 6 per centum per annum,

compounded annually, and shall pay the remainder in accordance with the provisions of section 501.

(e) If the veteran dies before the maturity of the loan, the amount of the unpaid principal and the unpaid interest accrued up to the date of his death shall be immediately due and payable. In such case, or if the veteran dies on the day the loan matures or within six months thereafter, the bank holding the note and certificate shall, upon notice of the death, present them to the Director, who shall thereupon cancel the note (but not the certificate) and pay to the bank, in full satisfaction of its claim, the amount of the unpaid principal and unpaid interest, at the rate fixed in the note, accrued up to the date of the check issued to the bank; except that if, prior to the payment, the bank is notified of the death by the Director and fails to present the certificate and note to the Director within fifteen days after the notice, such interest shall be only up to the fifteenth day after such notice. The Director shall deduct the amount so paid from the face value (as determined under section 501) of the certificate and pay the remainder in accordance with the provisions of section 501.

(f) If the veteran has not died before the maturity of the certificate, and has failed to pay his note to the bank or the Federal reserve bank holding the note and certificate, such bank shall, at the maturity of the certificate, present the note and certificate to the Director, who shall thereupon cancel the note

(but not the certificate) and pay to the bank, in full satisfaction of its claim, the amount of the unpaid principal and unpaid interest, at the rate fixed in the note, accrued up to the date of the maturity of the certificate. The Director shall deduct the amount so paid from the face value (as determined in section 501) of the certificate and pay the remainder in accordance with the provisions of section 501.

(g) The loan basis of any certificate at any time shall, for the purpose of this section, be an amount which is not in excess of 80 per centum of the reserve value of the certificate on the last day of the current certificate year. The reserve value of a certificate on the last day of any certificate year shall be the full reserve required on such certificate, based on an annual level net premium for twenty years and calculated in accordance with the American Experience Table of Mortality and interest at 4 per centum per annum, compounded annually.

(h) No payment upon any note shall be made under this section by the Director to any bank, unless the note when presented to him is accompanied by an affidavit made by an officer of the bank which made the loan, before a notary public or other officer designated for the purpose by regulation of the Director, and stating that such bank has not charged or collected, or attempted to charge or collect, directly or indirectly, any fee or other compensation (except interest as authorized by this section) in respect of any

loan made under this section by the bank to a veteran. Any bank which, or director, officer, or employee thereof who, does so charge, collect, or attempt to charge or collect any such fee or compensation, shall be liable to the veteran for a penalty of $100, to be recovered in a civil suit brought by the veteran. The Director shall upon request of any bank or veteran furnish a blank form for such affidavit.

Any negotiation, assignment or loan made in violation of any provision of the foregoing section of the law shall be void.

The loan value of this Certificate increases yearly after the second year. Under the loan table shown below one dollar is taken as a basis and the loan value thereof is shown opposite the yearly periods. To find the loan value of this Certificate at any time multiply the face value by the loan value on one dollar shown opposite the number of years corresponding to the number of years that have elapsed from the effective date of the Certificate.

*Table of loan values on this certificate*

| 20 years | Loan basis per $1 | 32 years | Loan basis per $1 |
|---|---|---|---|
| 2 | .08703 | 11 | .43550 |
| 3 | .11999 | 12 | .48199 |
| 4 | .15352 | 13 | .53584 |
| 5 | .18861 | 14 | .58919 |
| 6 | .22532 | 15 | .64522 |
| 7 | .26375 | 16 | .70409 |
| 8 | .30398 | 17 | .76592 |
| 9 | .34612 | 18 | .83123 |
| 10 | .39025 | 19 | .90000 |

Neither this Certificate nor any sum payable to a veteran, or to his estate, or to any beneficiary under this Certificate, nor pro-

ceeds of any loan made on this Certificate shall be subject to attachment, levy or seizure under any legal or equitable process, or to National or State taxation.

All rights under this Certificate are effective from the first day of January, 1925.

Age 32.

Given at the Central Office of the United States Veterans Bureau, in the city of Washington, District of Columbia, this First day of January, One Thousand Nine Hundred and Twenty Five.

No. 2034866

FRANK T. HINES,
*Director, United States Veterans Bureau.*

O. W. CLARK,
*Chief, Adjusted Compensation Division.*

(SEAL.)

The petition also alleged that respondent was the wife of said veteran and the beneficiary named in said certificate (R. 4); that the veteran died on August 13, 1925, and there became immediately due and payable to the respondent the sum of $867.00 (R. 6, 10, 11); and that although respondent had filed proof of claim and had complied with all requirements of law and of the Director of the Veterans' Bureau concerning the making and filing of said proof of claim, and had demanded payment, such payment had not been made. (R. 6.)

The Government has contended that a claim upon an adjusted service certificate issued under the pro-

visions of the World War Adjusted Compensation Act is a claim for a pension, and that since the statute giving the District Courts jurisdiction of claims against the United States expressly excepts claims for pensions, the District Court had no jurisdiction. The District Court held that the amount granted by the Adjusted Compensation Act was a gratuity plainly in the nature of a pension and that the District Court did not have jurisdiction. (R. 26.) The Circuit Court of Appeals held that the certificate which was issued was in substance a paid-up insurance policy and an undertaking by the Government to pay upon the happening of certain events which had happened and that the District Courts had jurisdiction. (R. 34, 35.)

### SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals erred in holding that the claim here sued upon was a contract.

2. The Circuit Court of Appeals erred in not holding that the claim here sued upon was a pension.

3. The Circuit Court of Appeals erred in holding that the District Court had jurisdiction of the claim here sued upon.

### REASONS FOR GRANTING THE WRIT

The Government has issued adjusted service certificates to most of those who served in the World War. Millions of such certificates are now outstanding. It is of great importance to the holders

of these certificates, to those who have made loans thereon, and to the Government to have a final determination as to whether the courts have jurisdiction of suits brought upon such certificates.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Third Circuit should be granted.

WILLIAM D. MITCHELL,
*Solicitor General.*

APRIL, 1928.

## BRIEF IN SUPPORT OF THE PETITION

### OPINION BELOW

The opinion of the District Court (R. 25) is not reported. The opinion of the Circuit Court of Appeals (R. 34) is reported in 23 F. (2d) 792.

### JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 10, 1928. (R. 33.) The jurisdiction of this Court is invoked under Act of February 13, 1925.

### STATEMENT

A statement of the facts and of the errors relied upon will be found in the petition.

### ARGUMENT

The argument on behalf of the United States is that the term "pension," as used in the Tucker Act, includes all gratuities awarded by the Government in consideration of services rendered, and that Congress intended that such gratuities were to be distributed by the proper executive department of the Government without interference by the courts. The Adjusted Compensation Act was clearly gratuitous, and all rights conferred thereby were therefore in the nature of pensions. It is true that Pension Acts have ordinarily provided for regular pay-

ments at fixed intervals, ceasing upon the death of the pensioner, while the certificates issued under the Adjusted Compensation Act provide for a single payment to the veteran at the end of twenty years, or, upon his earlier death, to a beneficiary or the veteran's estate. But the distinguishing characteristic of a pension is that it is gratuitous, not that it is paid in installments at intervals or in a lump sum at one time.

Moreover, the provisions of the Adjusted Compensation Act protecting the benefits under the Act from attachment, levy, or seizure under any legal or equitable process, exempting them from National and State taxation, and imposing a penalty upon any person who charges or collects, or attempts to charge or collect, any fee or other compensation for assisting a veteran or his dependents in obtaining any of such benefits (Sections 308–309), are similar to the safeguards provided by Congress in the case of pensions. See *United States* v. *Hall*, 98 U. S. 343, 353–355.

Further evidence that Congress considered that the benefits conferred by the Adjusted Compensation Act are in the nature of pensions is found in the provision of Section 310, added by the Amendatory Act of July 3, 1926 (c. 751, 44 Stat. 826, 828), making the decisions of the Secretary of War, the Secretary of the Navy, and the Director of the Veterans' Bureau, on all matters within their respective jurisdictions under the provisions of the Adjusted Compensation Act, final and conclusive.

This indicates that the benefits conferred by the Act are to be awarded by the proper executive departments, not enforced by the courts. And in any event in the present case the Director of the Veterans' Bureau has decided that the respondent should not be paid, and, in the absence of bad faith, the provisions of Section 310 make this decision final and not subject to review by the courts unless the section is to be construed as applicable only to decisions on matters leading up and prior to the issuance of a certificate.

The United States contends that the benefits conferred by the Adjusted Compensation Act are clearly gratuitously conferred and in the nature of a pension, and that the issuance of a certificate does not change the nature of the benefits to which the veteran is entitled. The certificate is based on the Act and is no more than evidence of the benefits to be enjoyed thereunder. Payment of the certificate is therefore still gratuitous and in the nature of a pension.

The principal argument on behalf of the respondent is that, while the issuance of a certificate may be gratuitous, the certificate when issued is an enforceable obligation. The Circuit Court of Appeals said (R. 35):

> This suit is not brought to obtain a pension or gratuity which the United States had provided generally for persons in a named class, of which the plaintiff's decedent was a member, but to enforce an obli-

> gation which the United States had entered into formally and directly with the plaintiff's decedent and, through him, with her, the named beneficiary. Whether the certificate evidencing the undertaking of the United States is based on a contractual or a moral obligation is not a matter of present concern in view of the fact that the United States voluntarily recognized the obligation, and, on the decedent's proof of services rendered, formally and unconditionally assumed it.

It must be admitted that support for this view is found in Section 502 of the Adjusted Compensation Act, permitting a loan to be made to a veteran upon his adjusted service certificate, and in the provisions of Section 501 providing for payment of the amount of a certificate, upon the veteran's death, to a named beneficiary or the estate of the veteran, when contrasted with the provisions of Title VI which permit only dependents to succeed to the benefits of the Act upon the death of a veteran to whom a certificate has not been issued.

On questions which the Director of the Bureau is required to pass on preliminary to the issue of an adjusted service certificate, his decision may well be final. No such question is here presented. As the bill of complaint was originally drawn, it did question the decision of the Director as to the amount of the certificate. That feature was eliminated by amendments to the complaint, and recovery is now sought on the certificate as issued,

the defense, not disclosed, relating to something occurring since.

We feel that the weight of the argument may be with the court below.

This is a case in which the writ should issue only if this Court believes there is substantial doubt as to the soundness of the decision below. Since banks have loaned large sums on these certificates, believing, no doubt, they are obligations of the United States enforceable in the courts, the presentation of this petition seems justified.

Respectfully submitted.

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HERMAN J. GALLOWAY,
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APRIL, 1928.

## APPENDIX

### THE WORLD WAR ADJUSTED COMPENSATION ACT

Title I of the World War Adjusted Compensation Act contains definitions, and among others a definition of the term "veteran" as used in the Act as including "any individual, a member of the military or naval forces of the United States at any time after April 5, 1917, and before November 12, 1918," with certain exceptions not here material.

Title II, which is headed "Adjusted Service Credit" contains the following:

> SEC. 201. The amount of adjusted service credit shall be computed by allowing the following sums for each day of active service, in excess of sixty days, in the military or naval forces of the United States after April 5, 1917, and before July 1, 1919, as shown by the service or other record of the veteran: $1.25 for each day of oversea service, and $1 for each day of home service; but the amount of the credit of a veteran who performed no oversea service shall not exceed $500, and the amount of the credit of a veteran who performed any oversea service shall not exceed $625.

Title III, headed "General Provisions", contains the following:

#### BENEFITS GRANTED VETERANS

> SEC. 301. Each veteran shall be entitled:
>
> (1) To receive "adjusted service pay" as provided in Title IV, if the amount of his adjusted service credit is $50 or less;
>
> (2) To receive an "adjusted service certificate" as provided in Title V, if the

amount of his adjusted service credit is more than $50.

APPLICATION BY VETERAN

SEC. 302. (a) A veteran may receive the benefits to which he is entitled by filing an application claiming the benefits of this Act with the Secretary of War, if he is serving in, or his last service was with, the military forces; or with the Secretary of the Navy, if he is serving in, or his last service was with, the naval forces.

* * * * *

TRANSMITTAL OF APPLICATION

SEC. 303. (a) As soon as practicable after the receipt of a valid application the Secretary of War or the Secretary of the Navy, as the case may be, shall transmit to the Director of the United States Veterans' Bureau (hereinafter in this Act referred to as the "Director") the application and a certificate setting forth—

(1) That the applicant is a veteran;

(2) His name and address;

(3) The date and place of his birth; and

(4) The amount of his adjusted service credit together with the facts of record in his department upon which such above conclusions are based.

(b) Upon receipt of such certificate the Director shall proceed to extend to the veteran the benefits provided for in Title IV or V.

EXEMPTION FROM ATTACHMENT AND TAXATION

SEC. 308. No sum payable under this Act to a veteran or his dependents, or to his estate, or to any beneficiary named under Title V, no adjusted service certificate, and no proceeds of any loan made on such certificate, shall be subject to attachment, levy, or

seizure under any legal or equitable process, or to National or State taxation.

UNLAWFUL FEES

SEC. 309. Any person who charges or collects, or attempts to charge or collect, either directly or indirectly, any fee or other compensation for assisting in any manner a veteran or his dependents in obtaining any of the benefits, privileges, or loans to which he is entitled under the provisions of this Act shall, upon conviction thereof, be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

Title IV, headed "Adjusted Service Pay," provides:

SEC. 401. There shall be paid to each veteran by the Director (as soon as practicable after receipt of an application in accordance with the provisions of section 302, but not before March 1, 1925), in addition to any other amounts due such veteran in pursuance of law, the amount of his adjusted service credit, if, and only if, such credit is not more than $50.

SEC. 402. No right to adjusted service pay under the provisions of this title shall be assignable or serve as security for any loan. Any assignment or loan made in violation of the provisions of this section shall be held void. Except as provided in Title VI, the Director shall not pay the amount of adjusted service pay to any person other than the veteran or such representative of the veteran as he shall by regulation prescribe.

Title V, headed "Adjusted Service Certificates," contains the following:

SEC. 501. The Director, upon certification from the Secretary of War or the Secretary

of the Navy, as provided in section 301, is hereby directed to issue without cost to the veteran designated therein a non-participating adjusted service certificate (hereinafter in this title referred to as a "certificate") of a face value equal to the amount in dollars of 20-year endowment insurance that the amount of his adjusted service credit increased by 25 per centum would purchase, at his age on his birthday nearest the date of the certificate, if applied as a net single premium, calculated in accordance with accepted actuarial principles and based upon the American Experience Table of Mortality and interest at 4 per centum per annum, compounded annually. The certificate shall be dated, and all rights conferred under the provisions of this title shall take effect, as of the 1st day of the month in which the application is filed, but in no case before January 1, 1925. The veteran shall name the beneficiary of the certificate and may from time to time, with the approval of the Director, change such beneficiary. The amount of the face value of the certificate (except as provided in subdivisions (c), (d), (e), and (f) of section 302) shall be payable out of the fund created by section 305 (1) to the veteran twenty years after the date of the certificate, or (2) upon the death of the veteran prior to the expiration of such twenty-year period, to the beneficiary named; except that if such beneficiary dies before the veteran and no new beneficiary is named, or if the beneficiary in the first instance has not yet been named, the amount of the face value of the certificate shall be paid to the estate of the veteran. If the veteran dies after making application under section 302, but before January 1, 1925, then the amount of the face value of the certificate shall be paid to the

same manner as if his death had occurred after January 1, 1925.

Section 502 contains detailed provisions as to the terms and conditions upon which a loan may be made to a veteran upon his adjusted service certificate.

Sections 505, 506, and 507, under the heading "Adjusted Service Certificate Fund," provide:

> SEC. 505. There is hereby created a fund in the Treasury of the United States to be known as "The Adjusted Service Certificate Fund", hereinafter in this title called "fund". There is hereby authorized to be appropriated for each calendar year (beginning with the calendar year 1925 and ending with the calendar year 1946) an amount sufficient as an annual premium to provide for the payment of the face value of each adjusted service certificate in twenty years from its date or on the prior death of the veteran, such amount to be determined in accordance with accepted actuarial principles and based upon the American Experience Table of Mortality and interest at 4 per centum per annum, compounded annually. The amounts so appropriated shall be set aside in the fund on the first day of the calendar year for which appropriated. The appropriation for the calendar year 1925 shall not be in excess of $[illegible].
>
> SEC. 506. The Secretary of the Treasury is authorized to invest and reinvest the moneys in the fund, or any part thereof, in interest-bearing obligations of the United States and to sell such obligations of the United States for the purposes of the fund. The interest on and the proceeds from the sale of any such obligations shall become a part of the fund.

> SEC. 507. All amounts in the fund shall be available for payment, by the Director, of adjusted service certificates upon their maturity or the prior death of the veteran, and for payments under section 502 to banks on account of notes of veterans.

Title VI, headed "Payments to Veteran's Dependents," provides that:

> SEC. 601. (a) If the veteran has died before making application under section 302, or, if entitled to receive adjusted service pay, has died after making application but before he has received payment under Title IV, then the amount of his adjusted service credit shall * * * be paid to his dependents * * *.

Following are provisions governing payments to dependents.

Title VII contains miscellaneous provisions which are not material in the present case.

### THE AMENDATORY ACT OF JULY 3, 1926

Most of the amendments of the World War Adjusted Compensation Act made by this Act are not material in the present case. Section 4 (b) of the Amendatory Act added a new section to read as follows:

#### FINALITY OF DECISIONS

> SEC. 310. The decisions of the Secretary of War, the Secretary of the Navy, and the Director, on all matters within their respective jurisdictions under the provisions of this Act (except the duties vested in them by Title VII) shall be final and conclusive.

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# INDEX


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Question presented | 2 |
| Statutes involved | 2 |
| Statement | 5 |
| Specification of errors | 6 |
| Summary of argument | 6 |
| Argument: | |
| I. A claim on an adjusted service certificate, if not a claim for a pension and excluded from the jurisdiction of the Court of Claims of the United States by Section 24 of the Judicial Code, is one jurisdiction of which was withheld from the courts by committing the decision of all matters to the director and making his decision final as to all matters within his jurisdiction | 9 |
| II. If there be sufficient doubt as to the purpose of Section 310 to warrant resort to the proceedings of Congress, the material there found conclusively shows that it was the intention of Congress to withhold from the courts jurisdiction of claims on adjusted service certificates | 17 |
| Conclusion | 27 |
| Appendix: | |
| World War Adjusted Compensation Act of 1924 | 28 |
| Act of July 3, 1926, amending World War Adjusted Compensation Act | 50 |


## CITATIONS


| Cases: | |
|---|---|
| *Schillinger v. United States*, 155 U. S. 163 | 14 |
| *Silberschein v. United States*, 266 U. S. 221 | 10, 11, 27 |
| *Staples v. United States*, 61 Ct. Cls. 433 | 15 |
| *People v. Westchester County National Bank of Peekskill*, 231 N. Y. 465 | 10 |
| *Price v. Society for Savings*, 64 Conn. 362 | 10 |
| *State v. Dixon*, 66 Mont. 76 | 10 |

Statutes:
World War Adjusted Compensation Act, c. 157, 43 Stat. 121—
Sec. 201, U. S. C. Title 38, Sec. 601 ..... 3
Sec. 310, as added by the act of July 3, 1926, Sec. 4 (d) (c. 751, 44 Stat. 826, 828; U. S. C. App. Title 38, Sec. 620, p. 2083) ..... 3, 12
Sec. 501 (U. S. C. Title 38, Sec. 641) ..... 4
Sec. 507 (U. S. C. Title 38, Sec. 647) ..... 13
Act of October 6, 1917, c. 104, Sec. 405, 40 Stat. 398, 410 ..... 9
Judicial Code, Sec. 24, Par. 20 (U. S. C. Title 28, Sec. 41, par. 20) ..... 2
Congressional documents:
Hearings before Ways & Means Committee, 69th Cong., First Session, on Bills proposing amendments to World War Adjusted Compensation Act ..... 18
House Report 554, 69th Cong., First Session, on H. R. 10277 .. 24
Senate Report 1188, 69th Cong., First Session, on H. R. 10277 ..... 25

# In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 104

THE UNITED STATES OF AMERICA, PETITIONER

*v.*

FLORENCE E. WILLIAMS

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT*

## BRIEF FOR THE UNITED STATES

### OPINIONS BELOW

The opinion of the District Court (R. 13) is not reported. The opinion of the Circuit Court of Appeals for the Third Circuit (R. 18) is reported in 23 F. (2d) 792.

### JURISDICTION

The judgement of the Circuit Court of Appeals was entered on January 10, 1928. (R. 17.) Petition for certiorari was filed April 7, 1928, and was granted on May 14, 1928. (R. 20.) The jurisdiction of the Court rests on the Act of February 13, 1925.

## QUESTION PRESENTED

The question presented is whether a District Court of the United States, sitting as a Court of Claims, has jurisdiction to entertain a suit against the United States on an adjusted service certificate issued pursuant to the World War Adjusted Compensation Act, brought by the beneficiary to recover the amount of money provided for in the certificate.

The answer depends on whether the claim is one for a pension within the meaning of paragraph 20 of Section 24 of the Judicial Code, which excludes claims for pensions from the jurisdiction of the court, and whether, even though not a suit for a pension, jurisdiction is withheld by Section 310 of the World War Adjusted Compensation Act, added by the Act of July 3, 1926, which section makes the decisions of the Director of the Veterans' Bureau final on all matters within his jurisdiction under the Act.

## STATUTES INVOLVED

Paragraph 20 of Section 24 of the Judicial Code (U. S. C. Title 28, Sec. 41, par. 20) confers on the District Courts original jurisdiction—

> Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for

> damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable * * * *Provided, however,* That nothing in this paragraph shall be construed as giving to either the district courts or the Court of Claims jurisdiction * * * to hear and determine claims for pensions * * *.

Section 4(b) of the Act of July 3, 1926 (c. 751, 44 Stat. 826, 828; U. S. C. App. Title 38, Sec. 620, p. 2083), which amended the World War Adjusted Compensation Act by adding the following section, provides:

> "SEC. 310. The decisions of the Secretary of War, the Secretary of the Navy, and the Director, on all matters within their respective jurisdictions under the provisions of this Act (except the duties vested in them by Title VII) shall be final and conclusive."

Section 201 of the World War Adjusted Compensation Act (c. 157, 43 Stat. 121, 122; U. S. C. Title 38, Sec. 601) provides:

> The amount of adjusted service credit shall be computed by allowing the following sums for each day of active service, in excess of sixty days, in the military or naval forces of the United States after April 5, 1917, and before July 1, 1919, as shown by the service or other record of the veteran: $1.25 for each day of oversea service, and $1 for each day

> of home service; but the amount of the credit of the veteran who performed no oversea service shall not exceed $500, and the amount of the credit of a veteran who performed any oversea service shall not exceed $625.

And Section 501 of the same Act (U. S. C. Title 38, Sec. 641) provides:

> The Director, upon certification from the Secretary of War or the Secretary of the Navy, as provided in section 303, is hereby directed to issue without cost to the veteran designated therein a nonparticipating adjusted service certificate (hereinafter in this title referred to as a "certificate") of a face value equal to the amount in dollars of 20-year endowment insurance that the amount of his adjusted service credit increased by 25 per centum would purchase, at his age on his birthday nearest the date of the certificate, if applied as a net single premium, calculated in accordance with accepted actuarial principles and based upon the American Experience Table of Mortality and interest at 4 per centum per annum, compounded annually. The certificate shall be dated, and all rights conferred under the provisions of this title shall take effect as of the 1st day of the month in which the application is filed, but in no case before January 1, 1925. The veteran shall name the beneficiary of the certificate and may from time to time, with the approval of the Director, change such beneficiary. The amount of the face value of the certificate (except as provided in subdi-

visions (c), (d), (e), and (f) of section 502) shall be payable out of the fund created by section 505 (1) to the veteran twenty years after the date of the certificate, or (2) upon the death of the veteran prior to the expiration of such twenty-year period, to the beneficiary named; except that if such beneficiary dies before the veteran and no new beneficiary is named, or if the beneficiary in the first instance has not yet been named, the amount of the face value of the certificate shall be paid to the estate of the veteran. If the veteran dies after making application under section 302, but before January 1, 1925, then the amount of the face value of the certificate shall be paid in the same manner as if his death had occurred after January 1, 1925.

The World War Adjusted Compensation Act (c. 157, 43 Stat. 121; U. S. C. Title 38, Sec. 591 et seq.) and the Act of July 3, 1926 (c. 751, 44 Stat. 826; U. S. C. App. Title 38, Sec. 612 et seq.), amendatory thereof, are set forth in the Appendix.

**STATEMENT**

The respondent brought this action against the United States in the United States District Court for the Western District of Pennsylvania alleging that an adjusted service certificate had been issued under the World War Adjusted Compensation Act to William C. Williams, a veteran; that she was his wife, and the beneficiary designated in the certificate; that he was deceased and she was entitled to the proceeds of the certificate, and had filed proof

of claim and complied with all the requirements of the Director and had demanded payment, which had been refused. (R. 1–3.)

The original petition raised issues as to whether the Director of the Bureau should have issued a certificate for a greater amount, but by amendment (R. 5) respondent based her suit on the certificate as issued.

The United States demurred to the petition on the ground that the court was without jurisdiction to entertain such a suit against the United States. (R. 4.)

The District Court sustained the demurrer and dismissed the petition. (R. 15.) On writ of error the Circuit Court of Appeals held that the District Court had jurisdiction and reversed its judgment. (R. 17–19.)

## SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred (1) in holding that this case does not present a claim for a pension; (2) in failing to hold that jurisdiction to entertain the suit was withheld by Section 310 of the World War Adjusted Compensation Act, which makes the Director's decisions final; and (3) in holding that the District Court had jurisdiction.

## SUMMARY OF ARGUMENT

I. The three principal provisions for veterans of the World War are: compensation for injury or disease contracted in service, war-risk insurance, and the so-called bonus or adjusted compensation here involved.

For war-risk insurance the veteran pays a premium and the Acts of Congress expressly grant jurisdiction to the courts to entertain suits on the policies.

Compensation for injury or disease is a gratuity, and this Court has held that the law commits to the Director of the Veterans' Bureau final decision on all matters involved.

The adjusted compensation to be received is also a gratuity or bonus, and it has all the qualities of a pension, and, like compensation for injury, the duty of administering the Act has been committed to the Director of the Bureau.

A claim under an adjusted service certificate may fairly be said to be a claim for a pension and withheld from the jurisdiction of the courts by Section 24, Judicial Code, but it is plain that Section 22 of the Adjusted Compensation Act, which makes the decisions of the Director final on all matters within his jurisdiction under the provisions of the Act, leaves the courts without jurisdiction to review his decisions.

The Director not only has matters to decide prior to the issue of the certificate, but the Act provides that after the certificate is issued, claims shall still be presented to and determined and passed upon by the Director. He is required, in the first instance, at least, to pass on all matters then existing which a court would pass on if it entertained jurisdiction. Since the law confides the decision of

these matters to the Director, his decisions are matters within his jurisdiction under the Act, and by Section 310 are made final.

There is a significant contrast between the Acts relating to War Risk Insurance, by which the courts are expressly authorized to entertain suits on war risk insurance in all controversies between the Bureau and the veteran or his beneficiaries, and the Adjusted Compensation Act, which makes no grant of jurisdiction to the courts and expressly makes the Director's decisions final.

II. If any doubt exists as to the purpose and effect of Section 310, so as to allow resort to the Congressional committee reports and hearings, the result is conclusive.

The original Adjusted Compensation Act was not explicit on this point and gave rise to a question whether the courts had jurisdiction. The bill to amend the World War Adjusted Compensation Act, as introduced and as considered by the House Committee, contained a new section (305), which granted jurisdiction to the courts to entertain claims on adjusted service certificates. The matter was discussed at committee hearings. The Veterans Bureau proposed that no suit should be allowed, and proposed Section 310 for that purpose. The Committee struck out the proposed Section 305 and inserted Section 310, making the Director's decisions final, and reported to Congress that the purpose was not to allow suits under the Act.

## ARGUMENT

### I

**A CLAIM ON AN ADJUSTED SERVICE CERTIFICATE, IF NOT A CLAIM FOR A PENSION AND EXCLUDED FROM THE JURISDICTION OF THE COURTS OF CLAIMS OF THE UNITED STATES BY SECTION 24 OF THE JUDICIAL CODE, IS ONE JURISDICTION OF WHICH WAS WITHHELD FROM THE COURTS BY COMMITTING THE DECISION OF ALL MATTERS TO THE DIRECTOR AND MAKING HIS DECISION FINAL AS TO ALL MATTERS WITHIN HIS JURISDICTION**

Three classes of benefits have been provided for veterans of the World War, war-risk insurance, compensation for disability contracted in the service, and adjusted-service compensation. War-risk insurance is paid for by the service men, and Section 405 of the Act of October 6, 1917 (c. 104, 40 Stat. 398, 410), providing for insurance stated:

> That in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides. * * *

This provision has been continued in amendatory statutes. (U. S. C., Title 38, Sec. 445.)

Compensation for physical disability is not the result of a contract or premium paid by the veteran, and the Act providing for it did not expressly grant jurisdiction to the courts to entertain claims under the Act. Whether the courts of the United States

had jurisdiction to entertain suits against the United States to recover disability compensation was considered in *Silberschein* v. *United States*, 266 U. S. 221. It was suggested there that a claim for compensation was a claim for a pension and withheld from the court's jurisdiction by Section 24 of the Judicial Code, but the Court passed that question without deciding it and held the courts had no jurisdiction because the Act committed to the Director of the Veterans' Bureau the duty and authority to administer its provisions and decide all matters arising under it, and the Court held, in the absence of any express provision to that effect, that his decisions were final and not reviewable, at least unless wholly unsupported by evidence or arbitrary.

The adjusted service compensation is in this respect like disability compensation. It is a bonus or gratuity for military service.

There is support for the contention that this adjusted service compensation is in its nature a pension and within the letter and spirit of that clause of Section 24 of the Judicial Code which withholds from the courts jurisdiction of claims for pensions.

*Price* v. *Society for Savings*, 64 Conn. 362, 366.

*People* v. *Westchester County National Bank of Peekskill*, 231 N. Y. 465.

*State* v. *Dixon*, 66 Mont. 76.

This question may be passed over as was done in the case of *Silberschein* v. *United States*, 266 U. S. 221.

There are more obvious reasons for denying jurisdiction of the courts over these claims.

There is no provision in the Act expressly conferring jurisdiction on the courts to entertain suits under it. The Act commits to the Director of the Veterans' Bureau the duty and authority of deciding questions arising under the Act, and, in addition, there is an express provision, which was lacking in the disability compensation case, considered in *Silberschein* v. *United States, supra,* which expressly makes the decisions of the Director final.

The World War Adjusted Compensation Act provides, in Section 201, for what is known as an adjusted service credit, computed at the rate of $1.25 per diem for overseas service and $1 per diem for home service. Sections 301 and 302 provided that if the adjusted service credit was $50 or less it should be paid in cash to the veteran as adjusted service pay, but if the credit was more than $50 an adjusted service certificate should be issued to him on his application, made before January 1, 1928.

The adjusted service certificate is provided for in Section 501. It resembles a 20-year endowment insurance policy, in that the amount payable under the certificate was the amount of 20-year endowment insurance which the adjusted service credit, increased by 25 per centum, would purchase for a man of the veteran's age, if applied as a net single

premium in accordance with actuarial principles and the American Experience Tables of Mortality and interest at 4 per centum, compounded annually. The amount of the certificate was made payable to the veteran if he survived to the end of the 20-year period, or to his designated beneficiary if and when he died before the maturity of the certificate.

Title VI of the Act provided that if the veteran did not apply for the certificate his dependents might apply after his death for payment of the adjusted service credit, which was made payable in ten quarterly installments if the total was more than $50.

Preliminary to the issue of the certificate, many facts as to the veteran's service were required to be passed on by the Secretary of the Navy, or the Secretary of War, or the Director of the Veterans' Bureau.

Section 310 of the Adjusted Compensation Act, added by the Act of July 3, 1926, provides that—

> The decisions of the Secretary of War, the Secretary of the Navy, and the Director on all matters within their respective jurisdictions under the provisions of this Act (except the duties vested in them by Title VII) shall be final and conclusive.

It is clear that all decisions by the Director on all matters passed on by him preliminary to the issue of the certificates are final and not reviewable in the courts.

It remains only to consider whether after the certificate is issued claims under it are matters within the jurisdiction of the Director on which he is required to make decisions. A review of the statute discloses that claims on adjusted service certificates are required to be presented to and passed on by the Director.

Section 502 of the Act authorized banks to make loans on these certificates and provided that in case of default in a loan the bank may present its claim to the Director, whether before the maturity of the certificate or afterwards. If before the maturity of the certificate payment is in the discretion of the Director. If after the maturity of the certificate proof of death of the veteran is required to be submitted to the Director, who is required to pay the bank's claim, and to pay the balance of the face value of the certificate, if any, to the beneficiaries designated. Section 507 provides that the fund appropriated by Congress, known as the Adjusted Service Certificate Fund—

> shall be available for payment, by the Director, of adjusted service certificates upon their maturity or the prior death of the veteran, and for payments under Section 502 to banks on account of notes of veterans.

In the same way, under Title VI, where no adjusted service certificate has been applied for or issued, and after the veteran's death his dependents apply for the payment of the adjusted service

credit, the claim is passed on and allowed or disallowed by the Director.

Questions which the Director is required to pass on, when claims under adjusted service certificates are presented to him for payment, may be whether the veteran has in fact died; whether the claimant is the same person designated as beneficiary by the veteran; whether a change of beneficiary attempted by the veteran after the certificate was issued as provided for in the Act has been effective so as to divest the original beneficiary and substitute a new one; whether a beneficiary who has caused the veteran's death is entitled to profit by the act and recover on the certificate; and other similar questions. Cases arise also where the age of the veteran may have been misstated in the application for the certificate, and when claim is made under the certificate the discrepancy is discovered, and the Director is then required to recalculate the amount of the certificate. Since the Director is required to consider and pay claims on certificates, he must necessarily decide, in the first instance, at least, all questions as to the right of the claimant to receive payment. His decisions on these matters are on matters within his jurisdiction under the provisions of the Act, and under the express terms of Section 310 are final and conclusive.

The right to sue the United States does not exist unless clearly conferred. *Schillinger* v. *United States*, 155 U. S. 163.

The absence of jurisdiction in the courts is much clearer in this case than it was in the *Silberschein* case, *supra*. The Circuit Court of Appeals in its decision below does not mention Section 310, and deals only with the question whether the claim is a claim for a pension under Section 24, Judicial Code. This may be accounted for by the fact that the claimant's brief below did not mention Section 310, and both the brief for the claimant and for the United States in the court below stated that the question was whether the claim was one for a pension, and while the Government's brief casually mentioned Section 310, it did not set forth or discuss it.

The only other case dealing with the question whether suit may be brought on an adjusted service certificate is *Singles* v. *United States*, 61 Ct. Cls. 433, in which an action on such a certificate was brought by a beneficiary before the amendment of July 3, 1926, which contains Section 310, was passed, making decisions of the Director final. The court did not pass on the question whether the claim was one for a pension under Section 24 of the Judicial Code, holding that the claim would have to be dismissed in any event because the requirements of the Act that the application be filed with the Secretary of War had not been complied with.

Section 310 provides that the Director's decision shall be final on all matters within his jurisdiction

under the provisions of the Act, except the duties vested in him by Title VII. Title VII of the original World War Adjusted Compensation Act related only to operating expenditures of the Bureau, estimates of expenditures for carrying out the provisions of the Act, and matters of that kind. It related in no way to claims on certificates. An anomalous situation has resulted from the fact that in the amendatory Act of July 3, 1926, after adding Section 310, making the decisions of the Secretary of War, the Secretary of the Navy, and the Director conclusive on all matters, except the duties vested in them by Title VII [which was appropriate enough as Title VII originally stood], the Act went on to add to Title VII, Section 705, authorizing the Director when it appears by evidence clear and satisfactory to him that an adjusted service certificate has been lost or destroyed, to issue a duplicate under such regulations and such restrictions and security as he may require. It is obvious that if the decision of the Director on any question should be final, a decision on an application for a duplicate certificate should be, and that when Congress added this provision to Title VII it must have overlooked the fact that decisions made in the discharge of the Director's duties under Title VII were excepted from the finality provision in Section 310. This situation has no material bearing on the question in this case.

## II

### IF THERE BE SUFFICIENT DOUBT AS TO THE PURPOSE OF SECTION 310 TO WARRANT RESORT TO THE PROCEEDINGS OF CONGRESS, THE MATERIAL THERE FOUND CONCLUSIVELY SHOWS THAT IT WAS THE INTENTION OF CONGRESS TO WITHHOLD FROM THE COURTS JURISDICTION OF CLAIMS ON ADJUSTED SERVICE CERTIFICATES

The original act of 1924 was not explicit. It was like the statute considered in *Silberschein* v. *United States, supra,* with no express provision for judicial consideration of claims, and with finality of decisions of the Director a matter of inference. Under the original Act the question arose whether the courts had jurisdiction of suits on certificates. It had been raised in *Singles* v. *United States, supra,* in the Court of Claims.

In 1926, after this question had arisen, the bill originally introduced by Mr. Mills to amend the World War Adjusted Compensation Act had a proposed Section 705, to the effect that—

> In the event of disagreement as to claim on an adjusted service credit or adjusted service certificate under this act between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such person or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies.

This is like the provision relating to war-risk insurance. The bill in this form was the subject of hearings before the subcommittee of the Committee on Ways and Means in the House. (H. R. 7082, 69th Cong., First Session; see Hearings before the Committee on Ways and Means, 69th Cong., First Session, on Bills proposing amendments to the World War Adjusted Compensation Act, issued by the Government Printing Office January 21, 1926.) The subcommittee considered this question, and the Veterans' Bureau, through Mr. Roberts, Assistant General Counsel, recommended that suits should not be permitted, and that all the decisions of the Director, including those on claims under adjusted service certificates, should be made final. The committee struck out the proposed Section 705, giving jurisdiction to the courts, and inserted Section 310, which was prepared by the Veterans' Bureau, to carry out the suggestion that the Director's decisions be final and not reviewable in the courts, and the Committee reported the Bill to the House, with the statement that the section was intended to prohibit suits against the Government under the Act.

The record of the subcommittee's hearings contains the following:

> Mr. Roberts. The next is section 11 of the bill on page 12, that a new section be added to Title VII to be known as section 705. This new section is in identical language with section 19 of the World War veteran's act, which authorizes suits on insurance con-

tracts issued under that act by the Government to the soldiers, with the exception that in place of the words "insurance contract" there is the word "certificate."

Mr. MILLS. Do you approve of this?

Mr. ROBERTS. When in case of disagreement, in view of the fact that approximately 4,000,000 certificates have been or will be issued, we do not feel that they should be thrown into the courts, or a large percentage of them, in the event of disagreement as to a claim under them. If such were the case, it would mean a vast amount of litigation for the Veterans' Bureau. We already have many cases wherein there is controversy as to the persons to take, one having been named as beneficiary; and the question of undue influence and fraud arises. The suggestion was made by the adjusted compensation division of the bureau that the bureau be given the right to go in and interplead parties wherever there was a question as to the correct person to take under this law. In others words, the Government would be allowed to file a bill of interpleader and let the courts make a final determination.

Mr. HAWLEY. Pay the money into the court and let the court determine the party to whom it should go.

Mr. ROBERTS. Let the court determine the party to whom the money should go. Another alternative is to make the decision of the director final. We are in this position: Suits have been brought in the Court of

Claims and one suit is now pending in the District of Columbia Supreme Court. No court has yet determined whether, independent of the passage of this amendment, there may not lie a suit in the Court of Claims on these adjusted service certificates; and we feel that Congress should either express definitely that the Director's decision is final, the same as it is in compensation cases, and there is no appeal to the courts, or Congress should provide a specific method of going into the court.

Mr. MILLS. Let us get this straight. That was the original provision in the bill, and it was taken out at the request of the bureau, but this section inserts it again.

Mr. ROGERS. We felt this way about that, Mr. Mills. That amendment was submitted to the legal division at the time that it was presented. The legal division's opinion on that is that on a bill of interpleader there is no appeal from the person who files the bill. In other words, theoretically at least, a person pays the money into court and says to the court: "There is the money; we do not know who is entitled to it;" and it is up to the court to decide who shall be entitled to it; the Government, no matter which way the court ruled, and no matter how many cases had previously been passed upon, would be in the position of not having the right to appeal.

Further, the question of the director going into court in any of these cases where he saw fit would immediately bring up the

question in the event of disagreement among beneficiaries of taking the director into court; and our position was that we did not see how the director could refuse to file a bill of interpleader in the event of a disagreement. As a consequence of that we felt that it would be better to give the parties the right to sue if the legislation was to be enacted at all.

Mr. Mace. Then you do not suggest a bill of interpleader as a substitute for this?

Mr. Brown. No. The director's official position is that he would prefer to have his decision final on these questions.

Mr. Mace. But if that can not be done, then you prefer the provision which allows you to interplead?

Mr. Brown. Then we prefer this to the bill of interpleader.

Mr. Mace. Personally, I am inclined to believe that you would be better off if we made the decision of the director final.

Mr. Brown. Otherwise it would be opening up a lot of litigation.

Mr. Mace. I do not think that you want to get into the law courts.

Mr. Hartman. I think the director's decision should be final.

Mr. Lewis. As long as we have the present director in office nobody need entertain any fear of his abusing the power.

Mr. Mace. We could make the director's decision final, and if we should get a director in the future who is not friendly we can amend the law then.

Mr. Lewis. I think, gentlemen, the Legion has the same attitude as this committee, that they want to provide for all these matters in the simplest and most direct way possible.

Mr. Hutchinson. I think the simplest and surest way would be to make the director's decision final.

Mr. Mills. Will it be constitutional?

Mr. Rogers. Yes, sir. The present World War veterans' act provides for compensation for reduced earning capacity. This is a compensation act in another form, as I see it. The director's decision under that act is final, and the Supreme Court in the case of *Silverwhite* v. *United States* has held that the director's determination is final and not subject to review by the courts, and that the act is constitutional.

Mr. Mills. It has been suggested that we make the decision of the director final and eliminate this court procedure. It seems to me that is very desirable.

Mr. Hutchinson. That is agreeable to the entire membership of the Committee here.

Mr. Rogers. And you would ignore the provisions for the bill of interpleader?

Mr. Mills. That was the original suggestion. They objected to it and we took it out because they did object.

Mr. Hutchinson. Is there anything further?

Mr. Rogers. I would just like to add that the attitude of the director is that he would rather assume the responsibility of final determination himself than to have these cases go to court.

Mr. HAWLEY. All right, Mr. Roberts. What is the last one?

* * * * *

Mr. ROBERTS. Would you also wish to have us prepare an amendment that would make the director's determinations final?

Mr. MILLS. I think it would be helpful; it would certainly help Bureau.

Mr. HAWLEY. I wish you would do that.

Mr. STARK. Yes.

Mr. HAWLEY. Gentlemen, when can you have these ready?

Mr. ROBERTS. We could have them ready by Monday, if that is early enough.

Mr. HAWLEY. Very well. That concludes the hearing.

Mr. ROBERTS. Mr. Chairman, General Hines, the director of the bureau, whom I represent before this committee, desires me to state to the committee, in order that there may be no misunderstanding as to his position with reference to review by the Comptroller General, that it is not the desire of the bureau, nor does the bureau recommend, that the determination of the director of all questions be made final and not subject to review by the General Accounting Office.

Our proposal to make the director's decision final on all matters is so phrased as to not exclude a review by the General Accounting Office in proper cases and the amendment was only for the purpose of prohibiting extensive litigation with reference to adjusted-service certificates.

The report of the Committee (Report 554, 69th Cong., First Session) on H. R. 10277 contains the following (p. 4):

FINALITY OF DECISION

Section 4 has for its purpose the conferring on the Secretary of War, the Secretary of the Navy, and the Director of the Veterans' Bureau of final and conclusive authority in all matters arising under their respective jurisdictions. To this end the Comptroller General of the United States is directed to allow credit in the accounts of the disbursing officers of the United States Veterans' Bureau for all payments authorized by the director heretofore or hereafter made for moneys appropriated for carrying out the provisions of the World War adjusted compensation act, as amended, except those covering administrative expense such as salaries, purchases, and travel allowances as covered in section 701 of the World War adjusted compensation act.

The effect of this amendment, while it will not necessitate the removal of the present auditing system maintained by the Comptroller General in the bureau, will be to prohibit the Comptroller General or his agents from disallowing cases upon disagreement with the director in matters of law or fact involved in the interpretation or application of the act, but will not interfere with the right of the Comptroller General to disallow expenditures by disbursing officers not

in conformity with instructions of the director. It will also prohibit suits against the Government under such act except as such suits are now allowable in connection with compensation payable under the World War Veterans act, 1924, as amended.

Section 305 of the present law confers upon the Secretary of War and the Secretary of the Navy authority to determine the individuals who are veterans and as to each veteran the amount of his adjusted service credit, and provides that their findings shall not be subject to review by the General Accounting Office. This section is amended by section 4 of the bill so as to leave out the statement as to the conclusiveness of their findings in this respect, such statement being unnecessary in view of the general language of section 310 as proposed by section 4 of the bill.

Similarly, the Report of the Senate Committee on Finance, accompanying H. R. 10277 (Report No. 1188, 69th Congress, First Session), contained the following (p. 4):

FINALITY OF DECISION

Section 4 has for its purpose the conferring on the Secretary of War, the Secretary of the Navy, and the Director of the Veterans' Bureau of final and conclusive authority in all matters arising under their respective jurisdictions. This is for the purpose of prohibiting suits in connection with the adjusted compensation act because of dif-

ferences of opinion between the Secretary of War, the Secretary of the Navy or the Director of the Veterans' Bureau, and applicants.

The statement in the Report of the House Committee to the effect that the section "will also prohibit suits against the Government under such act except as such suits are now allowable in connection with compensation payable under the World War Veterans' Act, 1924, as amended," is inaccurate in the use of the word "compensation," as no suits were maintainable for compensation, but only for war risk insurance, which was provided for in the World War Veterans' Act, 1924, as amended.

The report of the Senate Committee states that the section is for the purpose of prohibiting suits in connection with the Adjusted Compensation Act, because of differences of opinion between the Secretary of War, the Secretary of the Navy, or the Director of the Veterans' Bureau and applicants. The word "applicant" is used in the statute to describe a veteran applying for a certificate, or a dependent applying for payment of the adjusted service credit, and its use is not strictly accurate as applied to a claimant under an adjusted service certificate, but it is clear the Committee had in mind the prevention of any suit under the Act, and Section 310, which makes the Director's decisions final on all matters within his jurisdiction under the Act is not limited to controversies between the Bureau and "applicants."

## CONCLUSION

Even without the addition to the Act made by Section 310 the decision in *Silberschein* v. *United States, supra,* would have led to the conclusion that the Adjusted Compensation Act was intended to commit matters arising on claims under adjusted service certificates to the decision of the Director, but whatever doubt may have originally existed has been entirely removed by the addition of Section 310.

The judgment should be reversed.

Respectfully submitted.

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W. CLIFTON STONE,
*Attorney.*
WM. WOLFF SMITH,
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*United States Veterans' Bureau.*
JAMES T. BRADY,
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NOVEMBER, 1928.

# APPENDIX

**An Act To provide adjusted compensation for veterans of the World War, and for other purposes**

***Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,***

## TITLE I.—DEFINITIONS

SECTION 1. This Act may be cited as the "World War Adjusted Compensation Act."

SEC. 2. As used in this Act—

(a) The term "veteran" includes any individual, a member of the military or naval forces of the United States at any time after April 5, 1917, and before November 12, 1918; but does not include (1) any individual at any time during such period or thereafter separated from such forces under other than honorable conditions, (2) any conscientious objector who performed no military duty whatever or refused to wear the uniform, or (3) any alien at any time during such period or thereafter discharged from the military or naval forces on account of his alienage;

(b) The term "oversea service" means service on shore in Europe or Asia, exclusive of China, Japan, and the Philippine Islands; and service afloat, not on receiving ships; including in either case the period from the date of embarkation for such service to the date of disembarkation on return from such service, both dates inclusive;

(c) The term "home service" means all service not oversea service;

(d) The term "adjusted service credit" means the amount of the credit computed under the provisions of Title II; and

(e) The term "person" includes a partnership, corporation, or association, as well as an individual.

## TITLE II.—ADJUSTED SERVICE CREDIT

SEC. 201. The amount of adjusted service credit shall be computed by allowing the following sums for each day of active service, in excess of sixty days, in the military or naval forces of the United States after April 5, 1917, and before July 1, 1919, as shown by the service or other record of the veteran: $1.25 for each day of oversea service, and $1 for each day of home service; but the amount of the credit of a veteran who performed no oversea service shall not exceed $500, and the amount of the credit of a veteran who performed any oversea service shall not exceed $625.

SEC. 202. In computing the adjusted service credit no allowance shall be made to—

(a) Any commissioned officer above the grade of captain in the Army or Marine Corps, lieutenant in the Navy, first lieutenant or first lieutenant of engineers in the Coast Guard, or passed assistant surgeon in the Public Health Service, or having the pay and allowances, if not the rank, of any officer superior in rank to any of such grades—in each case for the period of service as such;

(b) Any individual holding a permanent or provisional commission or permanent or acting warrant in any branch of the military or naval forces, or (while holding such commission or warrant)

serving under a temporary commission in a higher grade—in each case for the period of service under such commission or warrant or in such higher grade after the accrual of the right to pay thereunder. This subdivision shall not apply to any noncommissioned officer;

(c) Any civilian officer or employee of any branch of the military or naval forces, contract surgeon, cadet of the United States Military Academy, midshipman, cadet or cadet engineer of the Coast Guard, member of the Reserve Officers' Training Corps, member of the Students' Army Training Corps (except an enlisted man detailed thereto), Philippine Scout, member of the Philippine Guard, member of the Philippine Constabulary, member of the National Guard of Hawaii, member of the insular force of the Navy, member of the Samoan native guard and band of the Navy, or Indian Scout—in each case for the period of service as such;

(d) Any individual entering the military or naval forces after November 11, 1918—for any period after such entrance;

(e) Any commissioned or warrant officer performing home service not with troops and receiving commutation of quarters or of subsistence—for the period of such service;

(f) Any member of the Public Health Service—for any period during which he was not detailed for duty with the Army or the Navy;

(g) Any individual granted a farm or industrial furlough—for the period of such furlough;

(h) Any individual detailed for work on roads or other construction or repair work—for the period during which his pay was equalized to conform

to the compensation paid to civilian employees in the same or like employment, pursuant to the provisions of section 9 of the Act entitled "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1920, and for other purposes," approved February 28, 1919; or

(i) Any individual who was discharged or otherwise released from the draft—for the period of service terminating with such discharge or release.

SEC. 203. (a) The periods referred to in subdivision (e) of section 202 may be included in the case of any individual if and to the extent that the Secretary of War and the Secretary of the Navy jointly find that such service subjected such individual to exceptional hazard. A full statement of all action under this subdivision shall be included in the reports of the Secretary of War and the Secretary of the Navy required by section 307.

(b) In computing the credit to any veteran under this title effect shall be given to all subdivisions of section 202 which are applicable.

(c) If part of the service is oversea service and part is home service, the home service shall first be used in computing the sixty days' period referred to in section 201.

(d) For the purpose of computing the sixty days' period referred to in section 201, any period of service after April 5, 1917, and before July 1, 1919, in the military or naval forces in any capacity may be included, notwithstanding allowance of credit for such period, or a part thereof, is prohibited under the provisions of section 202, except that the periods referred to in subdivisions (b), (c), and (d) of that section shall not be included.

(e) For the purposes of section 201, in the case of members of the National Guard or of the National Guard Reserve called into service by the proclamation of the President dated July 3, 1917, the time of service between the date of call into the service as specified in such proclamation and August 5, 1917, both dates inclusive, shall be deemed to be active service in the military or naval forces of the United States.

## TITLE III.—GENERAL PROVISIONS

### BENEFITS GRANTED VETERANS

SEC. 301. Each veteran shall be entitled:

(1) To receive "adjusted service pay" as provided in Title IV, if the amount of his adjusted service credit is $50 or less;

(2) To receive an "adjusted service certificate" as provided in Title V, if the amount of his adjusted service credit is more than $50.

### APPLICATION BY VETERAN

SEC. 302. (a) A veteran may receive the benefits to which he is entitled by filing an application claiming the benefits of this Act with the Secretary of War, if he is serving in, or his last service was with, the military forces; or with the Secretary of the Navy, if he is serving in, or his last service was with, the naval forces.

(b) Such application shall be made on or before January 1, 1928, and if not made on or before such date shall be held void.

(c) An application shall be made (1) personally by the veteran, or (2) in case physical or mental incapacity prevents the making of a personal ap-

plication, then by such representative of the veteran and in such manner as the Secretary of War and the Secretary of the Navy shall jointly by regulation prescribe. An application made by a representative other than one authorized by any such regulation shall be held void.

(d) The Secretary of War and the Secretary of the Navy shall jointly make any regulations necessary to the efficient administration of the provisions of this section.

TRANSMITTAL OF APPLICATION

SEC. 303. (a) As soon as practicable after the receipt of a valid application the Secretary of War or the Secretary of the Navy, as the case may be, shall transmit to the Director of the United States Veterans' Bureau (hereinafter in this Act referred to as the "Director") the application and a certificate setting forth—

(1) That the applicant is a veteran;

(2) His name and address;

(3) The date and place of his birth; and

(4) The amount of his adjusted service credit together with the facts of record in his department upon which such above conclusions are based.

(b) Upon receipt of such certificate the Director shall proceed to extend to the veteran the benefits provided for in Title IV or V.

PUBLICITY

SEC. 304. (a) The Director shall, as soon as practicable after the enactment of this Act, prepare and publish a pamphlet or pamphlets containing a digest and explanation of the provisions of this Act; and shall from time to time thereafter prepare

and publish such additional or supplementary information as may be found necessary.

(b) The publications provided for in subdivision (a) shall be distributed in such manner as the Director may determine to be most effective to inform veterans and their dependents of their rights under this Act.

[illegible]

SEC. 305. Immediately upon the enactment of this Act the Secretary of War and the Secretary of the Navy shall ascertain the individuals who are veterans as defined in section 2, and, as to each veteran, the number of days of overseas service and of home service, as defined in section 2, for which he is entitled to receive adjusted service credit, and their findings shall not be subject to review by the General Accounting Office, and payments made by disbursing officers of the United States Veterans' Bureau made in accordance with such findings shall be passed to their credit.

[illegible]

SEC. 306. Any officer charged with any function under this Act shall make such regulations, not inconsistent with this Act, as may be necessary to the efficient administration of such function.

[illegible]

SEC. 307. Any officer charged with the administration of any part of this Act shall make a full report to Congress on the first Monday of December of each year as to his administration thereof.

EXEMPTION FROM ATTACHMENT AND LEVY

SEC. 205. No sum payable under this Act to a veteran or his dependents, or to his estate, or to any beneficiary named under Title V, no adjusted service certificate, and no payments of any loan made on such certificate, shall be subject to attachment, levy, or seizure under any legal or equitable process, or to National or State taxation.

PENALTIES

SEC. 206. Any person who charges or collects, or attempts to charge or collect, either directly or indirectly, any fee or other compensation for assisting in any manner a veteran or his dependents in obtaining any of the benefits, privileges, or loans to which he is entitled under the provisions of this Act shall, upon conviction thereof, be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

TITLE IV—ADJUSTED SERVICE PAY

SEC. 401. There shall be paid to each veteran by the Director (as soon as practicable after receipt of an application in accordance with the provisions of section 402, but not before March 1, 1945), in addition to any other amounts due such veteran in pursuance of law, the amount of his adjusted service credit, if, and only if, such credit is not more than $50.

SEC. 402. No right to adjusted service pay under the provisions of this title shall be assignable or pass or accrue to any living person. Any assignment or loan made in violation of the provisions of this sec-

tion shall be held void. Except as provided in Title VI, the Director shall not pay the amount of adjusted service pay to any person other than the veteran or such representative of the veteran as he shall by regulation prescribe.

## TITLE V.—ADJUSTED SERVICE CERTIFICATES

SEC. 501. The Director, upon certification from the Secretary of War or the Secretary of the Navy, as provided in section 303, is hereby directed to issue without cost to the veteran designated therein a non-participating adjusted service certificate (hereinafter in this title referred to as a "certificate") of a face value equal to the amount in dollars of 20-year endowment insurance that the amount of his adjusted service credit increased by 25 per centum would purchase, at his age on his birthday nearest the date of the certificate, if applied as a net single premium, calculated in accordance with accepted actuarial principles and based upon the American Experience Table of Mortality and interest at 4 per centum per annum, compounded annually. The certificate shall be dated, and all rights conferred under the provisions of this title shall take effect, as of the 1st day of the month in which the application is filed, but in no case before January 1, 1925. The veteran shall name the beneficiary of the certificate and may from time to time, with the approval of the Director, change such beneficiary. The amount of the face value of the certificate (except as provided in subdivisions (c), (d), (e), and (f) of section 502) shall be payable out of the fund created by section 505 (1) to the veteran

twenty years after the date of the certificate, or (2) upon the death of the veteran prior to the expiration of such twenty-year period, to the beneficiary named; except that if such beneficiary dies before the veteran and no new beneficiary is named, or if the beneficiary in the first instance has not yet been named, the amount of the face value of the certificate shall be paid to the estate of the veteran. If the veteran dies after making application under section 302, but before January 1, 1925, then the amount of the face value of the certificate shall be paid in the same manner as if his death had occurred after January 1, 1925.

LOAN PRIVILEGES

SEC. 502. (a) A loan may be made to a veteran upon his adjusted service certificate only in accordance with the provisions of this section.

(b) Any national bank, or any bank or trust company incorporated under the laws of any State, Territory, possession, or the District of Columbia (hereinafter in this section called "bank"), is authorized, after the expiration of two years after the date of the certificate, to loan to any veteran upon his promissory note secured by his adjusted service certificate (with or without the consent of the beneficiary thereof) any amount not in excess of the loan basis (as defined in subdivision (g) of this section) of the certificate. The rate of interest charged upon the loan by the bank shall not exceed, by more than 2 per centum per annum, the rate charged at the date of the loan for the discount of 90-day commercial paper under section 13 of the Federal Reserve Act by the Federal reserve bank

for the Federal reserve district in which the bank is located. Any bank holding a note for a loan under this section secured by a certificate (whether the bank originally making the loan or a bank to which the note and certificate have been transferred) may sell the note to, or discount or rediscount it with, any bank authorized to make a loan to a veteran under this section and transfer the certificate to such bank. Upon the indorsement of any bank, which shall be deemed a waiver of demand, notice, and protest by such bank as to its own indorsement exclusively, and subject to regulations to be prescribed by the Federal Reserve Board, any such note secured by a certificate and held by a bank shall be eligible for discount or rediscount by the Federal reserve bank for the Federal reserve district in which the bank is located. Such note shall be eligible for discount or rediscount whether or not the bank offering the note for discount or rediscount is a member of the Federal Reserve System and whether or not it acquired the note in the first instance from the veteran or acquired it by transfer upon the indorsement of any other bank. Such note shall not be eligible for discount or rediscount unless it has at the time of discount or rediscount a maturity not in excess of nine months exclusive of days of grace. The rate of interest charged by the Federal reserve bank shall be the same as that charged by it for the discount or rediscount of 90-day notes drawn for commercial purposes. The Federal Reserve Board is authorized to permit, or on the affirmative vote of at least five members of the Federal Reserve Board to require, a Federal reserve bank to rediscount, for any other Federal reserve bank, notes secured by a certificate. The rate of

interest for such rediscounts shall be fixed by the Federal Reserve Board. In case the note is sold, discounted, or rediscounted the bank making the transfer shall promptly notify the veteran by mail at his last known post office address.

(c) If the veteran does not pay the principal and interest of the loan upon its maturity, the bank holding the note and certificate may, at any time after maturity of the loan but not before the expiration of six months after the loan was made, present them to the Director. The Director may, in his discretion, accept the certificate and note, cancel the note (but not the certificate), and pay the bank, in full satisfaction of its claim, the amount of the unpaid principal due it, and the unpaid interest accrued, at the rate fixed in the note, up to the date of the check issued to the bank. The Director shall restore to the veteran, at any time prior to its maturity, any certificate so accepted, upon receipt from him of an amount equal to the sum of (1) the amount paid by the United States to the bank in cancellation of his note, plus (2) interest on such amount from the time of such payment to the date of such receipt, at 6 per centum per annum, compounded annually.

(d) If the veteran fails to redeem his certificate from the Director before its maturity, or before the death of the veteran, the Director shall deduct from the face value of the certificate (as determined in section 501) an amount equal to the sum of (1) the amount paid by the United States to the bank on account of the note of the veteran, plus (2) interest on such amount from the time of such payment to the date of maturity of the certificate or of the death of the veteran, at the rate of 6 per centum per

annum, compounded annually, and shall pay the remainder in accordance with the provisions of section 501.

(e) If the veteran dies before the maturity of the loan, the amount of the unpaid principal and the unpaid interest accrued up to the date of his death shall be immediately due and payable. In such case, or if the veteran dies on the day the loan matures or within six months thereafter, the bank holding the note and certificate shall, upon notice of the death, present them to the Director, who shall thereupon cancel the note (but not the certificate) and pay to the bank, in full satisfaction of its claim, the amount of the unpaid principal and unpaid interest, at the rate fixed in the note, accrued up to the date of the check issued to the bank; except that if, prior to the payment, the bank is notified of the death by the Director and fails to present the certificate and note to the Director within fifteen days after the notice, such interest shall be only up to the fifteenth day after such notice. The Director shall deduct the amount so paid from the face value (as determined under section 501) of the certificate and pay the remainder in accordance with the provisions of section 501.

(f) If the veteran has not died before the maturity of the certificate, and has failed to pay his note to the bank or the Federal reserve bank holding the note and certificate, such bank shall, at the maturity of the certificate, present the note and certificate to the Director, who shall thereupon cancel the note (but not the certificate) and pay to the bank, in full satisfaction of its claim, the amount of the unpaid principal and unpaid interest, at the rate fixed in the note, accrued up to the date of the

maturity of the certificate. The Director shall deduct the amount so paid from the face value (as determined in section 501) of the certificate and pay the remainder in accordance with the provisions of section 501.

(g) The loan basis of any certificate at any time shall, for the purpose of this section, be an amount which is not in excess of 90 per centum of the reserve value of the certificate on the last day of the current certificate year. The reserve value of a certificate on the last day of any certificate year shall be the full reserve required on such certificate, based on an annual level net premium for twenty years and calculated in accordance with the American Experience Table of Mortality and interest at 4 per centum per annum, compounded annually.

(h) No payment upon any note shall be made under this section by the Director to any bank, unless the note when presented to him is accompanied by an affidavit made by an officer of the bank which made the loan, before a notary public or other officer designated for the purpose by regulation of the Director, and stating that such bank has not charged or collected, or attempted to charge or collect, directly or indirectly, any fee or other compensation (except interest as authorized by this section) in respect of any loan made under this section by the bank to a veteran. Any bank which, or director, officer, or employee thereof who, does so charge, collect, or attempt to charge or collect any such fee or compensation, shall be liable to the veteran for a penalty of $100, to be recovered in a civil suit brought by the veteran. The Director shall upon request of any bank or veteran furnish a blank form for such affidavit.

SEC. 503. No certificate issued or right conferred under the provisions of this title shall, except as provided in section 502, be negotiable or assignable or serve as security for a loan. Any negotiation, assignment, or loan made in violation of any provision of this section shall be held void.

SEC. 504. Any certificate issued under the provisions of this title shall have printed upon its face the conditions and terms upon which it is issued and to which it is subject, including loan values under section 502.

ADJUSTED SERVICE CERTIFICATE FUND

SEC. 505. There is hereby created a fund in the Treasury of the United States to be known as "The Adjusted Service Certificate Fund," hereinafter in this title called "fund." There is hereby authorized to be appropriated for each calendar year (beginning with the calendar year 1925 and ending with the calendar year 1946) an amount sufficient as an annual premium to provide for the payment of the face value of each adjusted service certificate in twenty years from its date or on the prior death of the veteran, such amount to be determined in accordance with accepted actuarial principles and based upon the American Experience Table of Mortality and interest at 4 per centum per annum, compounded annually. The amounts so appropriated shall be set aside in the fund on the first day of the calendar year for which appropriated. The appropriation for the calendar year 1925 shall not be in excess of $100,000,000.

SEC. 506. The Secretary of the Treasury is authorized to invest and reinvest the moneys in the fund, or any part thereof, in interest-bearing obli-

gations of the United States and to sell such obligations of the United States for the purposes of the fund. The interest on and the proceeds from the sale of any such obligations shall become a part of the fund.

SEC. 507. All amounts in the fund shall be available for payment, by the Director, of adjusted service certificates upon their maturity or the prior death of the veteran, and for payments under section 502 to banks on account of notes of veterans.

## TITLE VI.—PAYMENTS TO VETERAN'S DEPENDENTS

### ORDER OF PREFERENCE

SEC. 601. (a) If the veteran has died before making application under section 302, or, if entitled to receive adjusted service pay, has died after making application but before he has received payment under Title IV, then the amount of his adjusted service credit shall (as soon as practicable after receipt of an application in accordance with the provisions of section 604, but not before March 1, 1925) be paid to his dependents, in the following order of preference:

(1) To the widow or widower if unmarried;

(2) If no unmarried widow or widower, then to the children, share and share alike;

(3) If no unmarried widow or widower, or children, then to the mother;

(4) If no unmarried widow or widower, children, or mother, then to the father.

(b) For the purposes of this section payments made under paragraph (2) of subdivision (g) of section 301 of the War Risk Insurance Act shall not be considered payments made by the United States on account of the death of the veteran.

DEPENDENCY

SEC. 602. (a) No payment shall be made to any individual under this title unless at the time of the death of the veteran such individual was dependent.

(b) For the purposes of this section:

(1) A child of the veteran shall be presumed to have been dependent upon him at the time of his death if at such time such child was under 18 years of age;

(2) The widow or widower shall be presumed to have been dependent upon the veteran upon showing by them, respectively, the marital cohabitation; the father and mother, respectively, shall submit under oath a statement of the dependency, to be filed with the application.

PAYMENT IN INSTALLMENTS

SEC. 603. The payments authorized by section 601 shall be made in ten equal quarterly installments, unless the total amount of the payment is less than $50, in which case it shall be paid on the first installment date. No payments under the provisions of this title shall be made to the heirs or legal representatives of any dependents entitled thereto who die before receiving all the installment payments, but the remainder of such payments shall be made to the dependent or dependents in the next order of preference under section 601. All payments under this title shall be made by the Director.

APPLICATION BY DEPENDENT

SEC. 604. (a) A dependent may receive the benefits to which he is entitled under this title by filing an application therefor with the Secretary of War,

if the last service of the veteran was with the military forces, or with the Secretary of the Navy, if his last service was with the naval forces.

(b) Applications for such benefits, whether vested or contingent, shall be made by the dependents of the veteran on or before January 1, 1928; except that in case of the death of the veteran during the six months immediately preceding such date the application shall be made at any time within six months after the death of the veteran. Payments under this title shall be made only to dependents who have made application in accordance with the provisions of this subdivision.

(c) An application shall be made (1) personally by the dependent, or (2) in case physical or mental incapacity prevents the making of a personal application, then by such representative of the dependent and in such manner as the Secretary of War and the Secretary of the Navy shall jointly by regulation prescribe. An application made by a representative other than one authorized by any such regulation shall be held void.

(d) The Secretary of War and the Secretary of the Navy shall jointly make any regulations necessary to the efficient administration of the provisions of this section.

TRANSMITTAL OF APPLICATION

SEC. 605. (a) As soon as practicable after the receipt of a valid application the Secretary of War or the Secretary of the Navy, as the case may be, shall transmit to the Director the application and a certificate setting forth—

(1) The name and address of the applicant;

(2) That the individual upon whom the applicant bases his claim to payment was a veteran;

(3) The name of such veteran and the date and place of his birth; and

(4) The amount of the adjusted service credit of the veteran, together with the facts of record in the department upon which such above conclusions are based.

(b) Upon receipt of such certificate the Director shall proceed to extend to the applicant the benefits provided in this title if the Director finds that the applicant is the dependent entitled thereto.

ASSIGNMENTS

SEC. 606. No right to payment under the provisions of this title shall be assignable or serve as security for any loan. Any assignment or loan made in violation of the provisions of this section shall be held void. The Director shall not make any payments under this title to any person other than the dependent or such representative of the dependent as the Director shall by regulation prescribe.

DEFINITIONS

SEC. 607. As used in this Act—

(a) The term "dependent" means a widow, widower, child, father, or mother;

(b) The term "child" includes (1) a legitimate child; (2) a child legally adopted; (3) a stepchild, if a member of the veteran's household; (4) an illegitimate child, but, as to the father only, if acknowledged in writing signed by him, or if he has been judicially ordered or decreed to contribute to

such child's support, or has been judicially decreed to be the putative father of such child; and

(c) The terms "father" and "mother" include stepfathers and stepmothers, fathers and mothers through adoption, and persons who have, for a period of not less than one year, stood in loco parentis to the veteran at any time prior to the beginning of his service.

## TITLE VII.—MISCELLANEOUS PROVISIONS

SEC. 701. The officers having charge of the administration of any of the provisions of this Act are authorized to appoint such officers, employees, and agents in the District of Columbia and elsewhere, and to make such expenditures for rent, furniture, office equipment, printing, binding, telegrams, telephone, law books, books of reference, stationery, motor-propelled vehicles or trucks used for official purposes, traveling expenses and per diem in lieu of subsistence at not exceeding $4 for officers, agents, and other employees, for the purchase of reports and materials for publications, and for other contingent and miscellaneous expenses, as may be necessary efficiently to execute the purposes of this Act and as may be provided for by the Congress from time to time. All such appointments shall be made subject to the civil service laws. In all appointments under this section preference shall, so far as practicable, be given to veterans.

For the administration of the provisions of this Act, the President may except from the operation of section 4c of the Act entitled "An Act for making further and more effectual provision for the national defense, and for other purposes," approved June 3, 1916, as amended, or of any Act

amendatory thereof or supplemental thereto, not more than seven officers of the Army.

SEC. 702. Whoever knowingly makes any false or fraudulent statement of a material fact in any application, certificate, or document made under the provisions of Title III, IV, V, or VI, or of any regulation made under any such title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than five years, or both.

SEC. 703. The Secretary of War, the Secretary of the Navy, and the Director shall severally submit in the manner provided by law estimates of the amounts necessary to be expended in carrying out such provisions of this Act as each is charged with administering, and there is hereby authorized to be appropriated amounts sufficient to defray such expenditures. The Director shall also submit estimates for appropriations for the fund created by section 505.

F. H. GILLETT,
*Speaker of the House of Representatives.*
ALBERT B. CUMMINS,
*President pro tempore of the Senate.*

IN THE HOUSE OF REPRESENTATIVES, U. S.,
May 17, 1924.

The House having proceeded, in pursuance of the Constitution, to reconsider the bill (H. R. 7959) entitled "An Act to provide adjusted compensation for the veterans of the World War, and for other purposes," returned to the House by the President of the United States, with his objections thereto, with the message of the President returning the bill; and

*Resolved*, That the bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

WM. TYLER PAGE,
*Clerk.*

I certify that this Act originated in the House of Representatives.

WM. TYLER PAGE,
*Clerk.*

IN THE SENATE OF THE UNITED STATES,
May 19, 1924.

The Senate having proceeded to reconsider the bill (H. R. 7959) entitled "An Act to provide adjusted compensation for the veterans of the World War, and for other purposes," returned by the President of the United States to the House of Representatives, in which it originated, with his objections, and passed by the House on a reconsideration of the same, it was

RESOLVED, That the bill pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

GEORGE A. SANDERSON,
*Secretary.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 302 of the World War Adjusted Compensation Act is amended, to take effect as of May 19, 1924, to read as follows:

"SEC. 302. (a) A veteran may receive the benefits to which he is entitled by application claiming the benefits of this Act, filed with the Secretary of War, if he is serving in, or his last service was with, the military forces; or filed with the Secretary of the Navy, if he is serving in, or his last service was with, the naval forces.

"(b) Such application shall be made and filed on or before January 1, 1928, (1) personally by the veteran, or (2) in case physical or mental incapacity prevents the making or filing of a personal application, then by such representative of the veteran and in such manner as may be by regulations prescribed. An application made by a person other than the representative authorized by any such regulation, or not filed on or before January 1, 1928, shall be held void. If the veteran dies after the application is made and before it is filed it may be filed by any person: *Provided, however,* That if the veteran died between May 19, 1924, and July 1, 1924, without making the application, leaving a widow surviving him, the application may be made by the widow and shall be valid with the same force and effect in every respect as if the application had been made by the veteran.

"(c) If the veteran dies after the application is made, it shall be valid if the Secretary of War or the Secretary of the Navy, as the case may be, finds that it bears the bona fide signature of the applicant, discloses an intention to claim the benefits of this Act on behalf of the veteran, and is filed on or before January 1, 1928, whether or not the veteran is alive at the time it is filed. If the veteran dies and payments are made to his dependents under Title VI, and thereafter a valid application is filed under this section, then if the adjusted service credit of the veteran is more than $50, payment shall be made in accordance with Title V, less any amounts already paid under Title VI.

"(d) The Secretary of War and the Secretary of the Navy shall jointly make any regulations necessary to the efficient administration of the provisions of this section."

SEC. 2. Section 303 of such Act is amended to read as follows:

"SEC. 303 (a) As soon as practicable after the receipt of a valid application the Secretary of War or the Secretary of the Navy, as the case may be, shall transmit to the Director of the United States Veterans' Bureau (hereinafter in this Act referred to as the Director) the application and a certificate setting forth—

"(1) That a valid application has been received;

"(2) That the applicant is a veteran;

"(3) His name and address;

"(4) The date and place of his birth; and

"(5) The amount of his adjusted service credit.

"(b) Upon receipt of such certificate the Director shall proceed to extend to the veteran the benefits provided for in Title IV or V."

SEC. 3. (a) Section 308 of such Act is amended, to take effect as of May 19, 1924, to read as follows:

"SEC. 308. No sum payable under this Act to a veteran or his dependents, or to his estate, or to any beneficiary named under Title V, no adjusted service certificate, and no proceeds of any loan made on such certificate shall be subject to attachment, levy, or seizure under any legal or equitable process, or to National or State taxation, and no deductions on account of any indebtedness of the veteran to the United States shall be made from the adjusted service credit or from any amounts due under this Act."

(b) As used in this section the term "original credit" means the amount of the adjusted service credit computed under the World War Adjusted Compensation Act before its amendment by this Act, less amounts deducted on account of any indebtedness of the veteran to the United States; and the term "new credit" means the amount of the adjusted service credit computed under such Act as amended by this Act, without such deduction.

(c) If the veteran is alive at the time of the enactment of this Act and the benefits of the World War Adjusted Compensation Act have been extended to him, then any excess of the new credit over the original credit shall be considered as if it were a separate adjusted service credit and the benefits of such Act shall be extended in respect thereof according to the terms of such Act as amended by this Act.

(d) If the veteran has died before the enactment of this Act and before making application under section 302 of the World War Adjusted Compensation Act, then if any part of the original credit has

been paid to the dependents of the veteran, any remaining part shall be paid as provided in Title VI of such Act as amended by this Act, and any excess of the new credit over the original credit shall be paid in cash in a lump sum to the dependents as provided in Title VI of such Act as amended by this Act.

(e) If the veteran has died before the enactment of this Act after having made application, then—

(1) If the original credit was not over $50 and the new credit is not over $50 payment shall be made as provided in subdivision (d).

(2) If the original credit was not over $50 and the new credit is over $50 then the face value of an adjusted service certificate computed on the basis of the new credit shall be paid to the beneficiary named, or, if the beneficiary died before the veteran and no new beneficiary was named or if no beneficiary was named in the application, then to the estate of the veteran. If in any such case any payments have already been made to the veteran or his dependents, the amount of such payments shall be deducted from the face value of the adjusted service certificate.

(3) If the original credit was over $50 then the face value of an adjusted service certificate computed on the basis of the excess of the new credit over the original credit shall be paid as provided in paragraph (2) of this subdivision.

(f) Wherever under this Act or the World War Adjusted Compensation Act it is provided that payment shall be made by the Director of the United States Veterans' Bureau to the estate of any decedent, such payment, if not over $500, may, under regulations prescribed by the Director, be

made to the persons found by him to be entitled thereto, without the necessity of compliance with the requirements of law in respect of the administration of such estate.

SEC. 4. (a) Any person who charges or collects, or attempts to charge or collect, either directly or indirectly, any fee or other compensation for assisting in any manner a veteran, his dependents or other beneficiary under this Act, in obtaining any of the benefits, privileges or loans to which he is entitled under the provisions of this Act, shall, upon conviction thereof, be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

(b) Such Act is amended by adding after section 309 a new section to read as follows:

"FINALITY OF DECISIONS

"SEC. 310. The decisions of the Secretary of War, the Secretary of the Navy, and the Director on all matters within their respective jurisdictions under the provisions of this Act (except the duties vested in them by Title VII) shall be final and conclusive."

SEC. 5. Section 503 of such Act is amended to read as follows:

"SEC. 503. No certificate issued or right conferred under the provisions of this title shall, except as provided in section 502, be negotiable or assignable or serve as security for a loan. Any negotiation, assignment, or loan made in violation of any provision of this section shall be held void. If any person is named as beneficiary by the veteran as a consideration for the making of a loan to the veteran by such person or any other person, such

naming shall be void. Any person who accepts an assignment of a certificate or receives a certificate as security for a loan contrary to the provisions of this title, or who makes a loan to a veteran in consideration of the naming by the veteran of such person or any other person as beneficiary, shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than $500 or imprisoned not more than one year, or both."

SEC. 6. Section 601 of such Act is amended to read as follows:

"SEC. 601. If the veteran has died before making application under section 302, or, if entitled to receive adjusted service pay, has died after making application but before he has received payment under Title IV, then the amount of his adjusted service credit shall (as soon as practicable after receipt of an application in accordance with the provisions of section 604, but not before March 1, 1925) be paid to his dependents, in the following order of preference:

"(1) To the widow;

"(2) If no widow entitled to payment, then to the children, share and share alike;

"(3) If no widow or children entitled to payment, then to the mother;

"(4) If no widow, children, or mother, entitled to payment, then to the father."

SEC. 7. Section 602 of such Act is amended to read as follows:

"SEC. 602. (a) No payment under section 601 shall be made to a widow if she has remarried before making application, or if at the time of the death of the veteran was living apart from him by

reason of her own willful act; nor unless dependent at the time of the death of the veteran or at any time thereafter and before January 2, 1928. The widow shall be presumed to have been dependent at the time of the death of the veteran upon a showing of the marital cohabitation.

"(b) Payment under section 601 shall be made to a child if (1) under 18 years of age at the time of the death of the veteran, or (2) at any time thereafter and before January 2, 1928, incapable of self-support by reason of mental or physical defect.

"(c) No payment under section 601 shall be made to a mother or father unless dependent at the time of the death of the veteran or at any time thereafter and before January 2, 1928. If at the time of the death of the veteran or at any time thereafter and before January 2, 1928, the mother is unmarried or over 60 years of age, or the father is over 60 years of age, such mother or father, respectively, shall be presumed to be dependent."

SEC. 8. Section 605 of such Act is amended to read as follows:

"SEC. 605. (a) As soon as practicable after the receipt of a valid application the Secretary of War or the Secretary of the Navy, as the case may be, shall transmit to the Director the application and a certificate setting forth—

"(1) That a valid application has been received;

"(2) The name and address of the applicant;

"(3) That the individual upon whom the applicant bases his claim to payment was a veteran;

"(4) The name of such veteran and the date and place of his birth; and

"(5) The amount of the adjusted service credit of the veteran.

"(b) Upon receipt of such certificate the Director shall proceed to extend to the applicant the benefits provided in this title if the Director finds that the applicant is the dependent entitled thereto."

SEC. 9. Section 607 of such Act is amended by striking out "and" at the end of subdivision (b), by striking out the period at the end of subdivision (c) and inserting a semicolon and the word "and", and by adding after subdivision (c) a new subdivision to read as follows:

"(d) The term 'widow' includes widower."

SEC. 10. Title VI of such Act is amended by adding at the end thereof a new section to read as follows:

"SEC. 608. If the veteran died while in the service and before July 1, 1919, and if an adjusted service credit has been or is, after this section takes effect, certified to the Director, then the sum of $60 shall be paid in a lump sum to the dependents of such veteran in the same manner as is provided in sections 601 and 602 of this Act."

SEC. 11. This Act shall not invalidate any payments made or applications received under the World War Adjusted Compensation Act before the enactment of this Act. Payments under awards heretofore or hereafter made shall be made to the dependent entitled thereto regardless of change in status, unless another dependent establishes to the satisfaction of the Director a priority of preference under such Act as amended by this Act. Upon the establishment of such preference the remaining installments shall be paid to such dependent, but in no case shall the total payments under Title VI of such Act (except section 608) exceed the adjusted service credit of the veteran.

SEC. 12. Title VII of such Act is amended by adding at the end thereof a new section to read as follows:

"SEC. 704. Whoever falsely makes, forges, counterfeits, or alters, or causes or procures to be made, forged, counterfeited, or altered, or willingly aids or assists in falsely making, forging, counterfeiting, or altering an adjusted service certificate issued under authority of this Act, or whoever passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, any such false, forged, counterfeited, or altered certificate, with intent to defraud the United States or any person, or whoever has in possession any such falsely made, forged, counterfeited, or altered certificate, with intent to unlawfully use the same, shall be punished by a fine of not more than $5,000 and imprisonment not more than fifteen years. The Secretary of the Treasury is hereby authorized to direct and use the Secret Service Division of the Treasury Department to detect, arrest, and deliver into the custody of the United States marshal having jurisdiction any person or persons violating any of the provisions of this section."

SEC. 13. Title VII of such Act is further amended by adding at the end thereof a new section to take effect as of May 19, 1924, and to read as follows:

"SEC. 705. Whenever it appears to the Director, by evidence clear and satisfactory to him, that any adjusted service certificate has, without bad faith upon the part of the person entitled to payment theron, been lost, destroyed, wholly or in part, or so defaced as to impair its value to the rightful holder, and such adjusted service certificate is identified by number and description, the Director

shall under such regulations and with such restrictions as to time and retention for security or otherwise as he may prescribe, issue a duplicate thereof of like value in all respects to the original certificate and so marked as to show the original number of the certificate lost, destroyed, or defaced, and the date thereof. The lawful holder of such certificate who makes application for a duplicate shall surrender the original, if existing, or so much thereof as may remain and shall file in the United States Veterans' Bureau a bond in a penal sum of the face value of such lost, destroyed, or defaced certificate, with two good and sufficient securities, residents of the United States, to be approved by the Director, with condition to indemnify and save harmless the United States from any claim upon such lost, destroyed, or defaced certificate."

Approved, July 3, 1926.

APR 18 .28
CHARLES ELMORE CROPLEY
CLERK

No. [redacted] 104

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1927.

UNITED STATES OF AMERICA, Petitioner,

vs.

FLORENCE E. WILLIAMS, Respondent.

**Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.**

## BRIEF FOR RESPONDENT.

WILLIAM KAUFMAN,
*Attorney for Respondent.*

1102 Standard Life Bldg.,
Pittsburgh, Pa.

Josiah Smith Co., Pennsylvania Representative,
106 Ross Street, Pittsburgh, Pa.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1927.

**No. 894.**

UNITED STATES OF AMERICA, Petitioner,
vs.
FLORENCE E. WILLIAMS, Respondent.

**Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.**

## BRIEF FOR RESPONDENT.

Counsel for respondent considers the unanimous opinion of the Circuit Court of Appeals to be ample and satisfactory argument for the respondent, and will not add anything to it except references to the case of Singles vs. United States, 61 Ct. Cls. 433—the only case besides the one at bar where an adjusted service certificate has been

before any court; and although it appears to have been decided on January 11th, 1926, no appeal has been taken by either party.

It was there held: "The claim of a beneficiary for adjusted compensation under the World War Adjusted Compensation Act of May 19th, 1924, is a claim for a gratuity within the jurisdiction of the Court of Claims, and is not a claim for a pension."

And on page 436 the Court, in its opinion, said:

> "If the claim be construed as a pension, the Court's jurisdiction is expressly excluded by the organic Act. Section 145, Judicial Code. But in cases of a mere gratuity granted by a statute, this Court has frequently granted relief. See Semple case, 24 C. Cls. 422; Mumford case, 31 C. Cls. 210; United States vs. Realty Co., 163 U. S. 427-441. See the many 'extra pay' cases growing out of the Spanish War, 39 C. Cls. 569, based upon the Hunt case, 38 C. Cls. 704. * * * The case becomes one against the United States which should be considered upon its merits. * * *"

Counsel for respondent would also add to the opinion of the Circuit Court of Appeals references to some of the salient features of the statute involved which indicate that Congress did not intend it to be a "pension" Act, but rather an "adjusted" or "extra" compensation Act, namely:

It is entitled, "An Act to provide *adjusted compensation* for veterans of the World War and for other purposes."

By Section 601, the amount of the adjusted service credit to which the veteran is entitled must be computed, as therein specifically directed.

By Section 641 the Director is ordered to issue, without cost, to each veteran an adjusted service certificate, the amount of which is to be calculated, and the terms of which are to be, as specifically directed by this section. There is nothing left to the discretion of the Director. The adjusted service credit, a definite amount in dollars and cents, due to each veteran, increased by 25%, is directed to be used to purchase for him an adjusted service certificate, in which the Government certifies that the face value "shall become due and payable" to the veteran on a specified date; or upon the death of the veteran prior to that date, to the beneficiary therein named. The certificate is therefore a contractual obligation, based upon actual monetary consideration, and is therefore neither pension nor gratuity.

Section 641 also provides that if for certain reasons the certificate cannot be paid to the beneficiary, *it shall be paid to the estate of the veteran.*

Section 642 grants and limits loan privileges.

Section 645 creates a fund for the payment of the certificates and makes an appropriation, and every Congress since then has made enormous appropriations to enable the Act to be carried into effect.

Throughout the Act, it is evident that the benefits conferred were intended as "additional compensation," and "extra pay," for services rendered.

There is no expression or hint that they were intended to be given as a "pension."

All these incidents definitely take the adjusted service certificate out of the realm of pension, and make it an enforceable, contractual obligation of the United States.

The cardinal rule of interpretation for both statutes and contracts, that the plain words employed govern, applies. Neither parties nor Court may read into a statute or a contract any provision or exception not found therein.

It follows that the claim in this suit is "founded upon a law of Congress" and "upon a contract * * * express with the Government of the United States," and is not a claim for a "pension"; therefore the District Court has jurisdiction by the express provisions of Paragraph 20 of Section 24 of the Judicial Code, quoted on page 2 of petitioner's brief.

On page 13 of petitioner's brief, counsel for petitioner have recited "Reasons for Granting the Writ." None of them appears to be within those enumerated by this Court in paragraph 5, of Rule 35.

Furthermore, this petition will upon consideration appear to be frivolous, and intended for delay and to oppress the respondent.

The respondent is so poor that when she sued out the Writ of Error from the District Court to the Circuit Court of Appeals she had to present a petition in *forma pauperis* (R. 28-31.) The case has been pending for more than two years, and the Government has not yet filed an answer to

the merits. The question here presented is merely one of jurisdiction. The Government would have forfeited none of its rights if it had reserved its objection to the jurisdiction by proper exception, filed an answer or affidavit of defense to the merits, and let the case be decided thereon. If it lost, it could always have raised the question of the jurisdiction on subsequent appeal. In a sense it is a cruel hardship on this respondent for the Government to pick out her case as a test case for subsequent cases, as it says it has done, in enumerating the "Reasons for Granting the Writ," on pages 13 and 14 of its brief. Why should she be compelled to sustain such a hardship? Who is to defray her costs? Her situation and condition do not appear to have received any consideration from the Government or from any of its officers, or directors of departments; they suffer nothing, and they probably consider that the Government will suffer nothing, because it cannot be mulcted with either interest or costs.

The petition for Writ of Certiorari ought to be dismissed.

April __, 1928.

Respectfully submitted.

WILLIAM KAUFMAN,
*Attorney for Respondent.*

Supreme Court, U.S.
FILED
DEC 5 19

IN THE

# Supreme Court of the United States

**No. 104 OCTOBER TERM, 1928.**

UNITED STATES OF AMERICA,
*Petitioner,*

vs.

FLORENCE E. WILLIAMS,
*Respondent.*

## BRIEF FOR RESPONDENT, SUPPLEMENTAL TO BRIEF FOR RESPONDENT IN PETITION FOR WRIT OF CERTIORARI AT NO. 894 OCTOBER TERM, 1927.

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IN THE

# Supreme Court of the United States

**No. 104 OCTOBER TERM, 1928.**

UNITED STATES OF AMERICA,
*Petitioner,*

vs.

FLORENCE E. WILLIAMS,
*Respondent.*

## Brief for Respondent, Supplemental to Brief for Respondent in Petition for Writ of Certiorari at No. 894 October Term, 1927.

Only the facts alleged in the Petition of Claim (Record, pages 3 *et seq.*) may be considered as the facts in this case.

They are as follows:

An Adjusted Service Certificate was issued and delivered to William C. Williams, the veteran, and husband of the Respondent upon his application and pursuant to the provisions of the World War Adjusted Compensation Act of May 19, 1924, c. 157, 43 Stat. 121, and this suit is based

upon that certificate and Act of Congress, the Respondent being the beneficiary named in the application and referred to in the certificate.

The veteran died August 13, 1925. Thereupon, according to the certificate and the Act, the face value thereof, namely, $867.00, became immediately due and payable to the Respondent, beneficiary, and due proof of claim was filed and all requirements of law and of the Director concerning the making and filing of proof of claim were complied with.

After payment was demanded and refused, this suit was brought.

A copy of the Adjusted Service Certificate is printed in the record (pages 12 *et seq.*), the first paragraph of which contains the following:

> "It is hereby certified that pursuant to the World War Adjusted Compensation Act and in conformity with the laws of the United States, the amount herein named, $867.00 * * * *shall become due and payable* on the first day of January, 1945, to William C. Williams, herein referred to as the veteran, or upon the death of the veteran prior to the due date above named, the amount hereinabove stated *shall become due and payable* to the beneficiary named by the veteran * * *."

The only question in the case is, is the claim of the Respondent a claim for a pension?

We have pointed out in the "Brief for Respondent" the several provisions of the Act which definitely take the Adjusted Service Certificate out of the realm of "Pension" and make it an enforcible contractual obligation of the United States, and the Circuit Court of Appeals has held,

and we contend correctly, that the District Court has jurisdiction as a Court of Claims of the claim upon it under that provision of the Judicial Code, now Paragraph 20 of Section 41 of Title 28, U. S. C.

This being a suit to recover a sum of money from the United States and not a proceeding in mandamus against any administrative officer, Sec. 4 (b) of the Act of July 3, 1926, c. 751, 44 Stat. 826, now Sec. 620 of Title 38, U. S. C., referred to on page 16, and copied on page 25, of the Petition for Certiorari, does not apply. It clearly has reference only to the administrative powers of the officers therein named, as granted by Sec. 306 of the original Act, now Sec. 616 of Title 38, U. S. C., which reads as follows:

> "Any officer charged with any function under the provisions of this chapter shall make such regulations not inconsistent with the provisions of this chapter as may be necessary to the efficient administration of such function."

The language of these sections of the statutes need no construction. They will not justify any one of the officials named to act in a manner "inconsistent with the statute," or to make a wilful, capricious or arbitrary decision, contrary to the terms of the statute or of the certificate.

In regard to the Act of 1926, Counsel for the Government argue (page 17) as follows:

> "This indicates that the benefits conferred by the Act are to be awarded by the proper executive departments, not enforced by the courts. And in any event in the present case the Director of the Veterans' Bureau has decided that the respondent should not be paid, and, in the absence of bad faith, the provisions of Section 310 make this decision final and not subject to review by the courts unless the section is to be construed as applicable only to decisions on matters leading up and prior to the issuance of a certificate."

In the first place, the statement that it was the Director of the Veterans' Bureau who has decided that the Respondent should not be paid, is an unwarranted assumption of a fact not alleged in the Petition of Claim and must, therefore, be disregarded.

In the next place, the averments of the Petition of Claim *which are all of the facts which may be considered at the present time* present a clear case where the facts are undisputed and the only conclusion properly to be drawn therefrom is one favorable to the claimant and where the law has evidently been misconstrued, and the action of the executive officer who is responsible for the refusal of the payment of this claim, whoever he may be or whatever his authority, has been arbitrary and capricious.

This presentation of the facts of the case completely refute the presumption that such executive officer has acted in good faith in the discharge of his duties.

Also, since the facts are undisputed, the decision of this court in *Medbury* vs. *U. S.* 173 U. S. 492, applies. In that case it was contended for the Government that the decision of the Secretary of the Interior under the Act of Congress involved was final and conclusive and that the Court of Claims did not have jurisdiction. The Court of Claims did decide that it did not have jurisdiction, but the Supreme Court, decided otherwise, saying (after holding on pages 494 and 495, that the claim was founded upon a law of Congress of 1880, and that by the Act of March 3, 1887, the Court of Claims is given jurisdiction to hear and determine among other things all claims founded upon any law of Congress) on pages 497 and 498, as follows:

> "Although the right to recover back the excess of payment in this proceeding is based upon the Statute

of 1880, we do not think it comes within the principle of those cases which hold that where a liability and a remedy are created by the same statute, the remedy thus provided is special and exclusive. In this case it is not a right and a remedy created by the same statute. The statute creates the right to have repayment under the facts therein stated, but it gives no remedy for a refusal on the part of the Secretary to comply with its provisions. * * * We cannot suppose that Congress intended in such case to make the decision of the Secretary final when it was made on undisputed facts. If not, then there is a remedy in the Court of Claims for none is given in the Act which creates the right. The procedure for obtaining the repayment as provided for in the Act must be followed and when the application is erroneously refused, the party wronged has his remedy, but that remedy is not furnished by the same statute, which gives him the right.

"If there were any disputed questions of fact before the Secretary, his decision in regard to those matters would probably be conclusive and would not be reviewed in any court. But where, as in this case, there is no disputed question of fact and the decision turns exclusively upon the proper construction of the Act of Congress, the decision of the Secretary refusing to make the payment is not final and the Court of Claims has jurisdiction of such a case."

Applying the cardinal rule of interpretation both of statutes and of contract that plain words employed govern and that neither parties nor court may read into a statute or contract something not therein written, we emphatically contradict the conclusion reached by Counsel for the Government on page 16 of the Petition for Certiorari that the provisions of the Act of 1926 constitute "Further evidence that Congress considered that the benefits conferred by the Adjusted Compensation Act are in the nature of pensions."

That is a most violent conclusion, not supported or justified by the language of the Act of 1926, or by any provisions of the original Act.

Neither is it relevant nor proper to refer in this case to any of the sections of the Act, (see page 25 of the Petition for Certiorari), which deal with cases where the amount of the *Adjusted Service Credit* is less than $50, and *therefore, according to the Act*, Title 3, Sec. 301, (page 20 of the Petition for Certiorari), *entitled only to* "adjusted service pay" *and not to an* "adjusted service certificate," —for the simple reason, that they do not come within the facts of this case.

As to the statement of Counsel for the Government on page 16 of the Petition for Certiorari, as follows:

> "But the distinguishing characteristic of a pension is that it is gratuitous, not that it is paid in installments at intervals or in a lump sum at one time"

in support of which it will be noted that no authority has been cited:—

We submit to the contrary, the following:

30 Cyc., 1368:

> "A pension may be defined as a periodical allowance of money granted by the Government for services rendered, in particular to a soldier or sailor in connection with a war or with military operations."

Same definition may be found in Anderson's "Law Dictionary."

Judge Baldwin in *Price vs. Society for Savings*, 64 Conn. 362, at page 366, gives the following definition which is perhaps the most frequently referred to and cited with approval:

> "A pension is a bounty for past services rendered to the public. It is mainly designed to assist the pensioner in providing for his daily wants."

These definitions emphasize the characteristics of a pension to be "a periodical allowance" and "mainly designed to assist the pensioner in providing for his daily wants"—decisively differentiating the claim in the case at bar from that of a claim for a pension.

Section 501 of the Act, now Sec. 641 of Title 38, U. S. C., the provisions of which are embodied in the certificate, provides that if for certain reasons the certificate cannot be paid to the beneficiary, *it shall be paid to the estate of the veteran*.

This is very significant, because a pension always dies with the pensioner.

In *Hall's Estate*, 20 Pa. D. R., 867, wherein Judge Baldwin's definition of pension was adopted, it was held that a pension is not part of the assets of the decedent's estate.

Section 505 of the Act, now Sec. 645 of Title 38, U. S. C., creates a fund for the payment of the certificates and makes an appropriation, and every Congress since then has made enormous appropriations to enable the Act to be carried into effect.

This is noted in the opinion of the Circuit Court of Appeals; and it has been held is equivalent to a recognition of the right of the claimant and to a promise to pay the claim.

In *Soule vs. U. S.*, 38 Ct. Cl. 525, it was held that the court had jurisdiction, and petitioner was allowed to recover in suit decided in 1903, a claim on account of special back service pay, bounty and allowances between August 21, 1862, and July 5, 1863, under an Act making appropriations for the year ending June 30, 1897. The court held (page 530) that by the Act making the appropriation, Con-

gress certainly intended that any arrears of pay or bounty should be paid, and that right should be recognized to the full extent of giving the soldier an opportunity of establishing his right, and thereby practically asserting his right to payment and redress. Also, (page 531, referring to *Hukal vs. U. S.*, 16 Ct. Cl. 562) that an appropriation for payment of a particular demand or *class of demands* includes a recognition of their legality and justice and is equivalent to a mandate to the officers of the Treasury to pay the same; that the court has jurisdiction of claims which Congress acknowledges as right against the Government; and that they come within the intent of the statute (Paragraph 20 of Sec. 41 of Title 28, U. S. C.) *declaring that the court has jurisdiction to hear and determine all claims founded upon a law of Congress.* Also, (pages 531 and 532) applying that principle to the case at bar, it must follow that the Appropriation Act is a *promise* on the part of the United States to pay such soldiers as come within its designation whatever may be due them. Also, (page 532) that if claimant has a right of recovery, it is not necessary that he should resort to the accounting department of the Government in the first instance; he may seek that forum of adjudication which has the right to pass judicially on the question. Also, (page 534) as follows:

> "Congress in the passage of the Appropriation Act on which claimant founds her claim recognized the right of decedent to pay, if he had not been paid * * * and that right being founded on an Act of Congress makes consummate in his personal representative a right to whatever may be due him, that right being existent under the statute, the jurisdiction of this court is open in order that there may be a judicial investigation and determination of the question as to whether there was anything due the decedent at the time of his death for services rendered during the Civil War. * * *"

To the same effect, we beg also to refer to *Newcomber vs. U. S.*, 51 Ct. Cl. 408, and *Magannis vs. U. S.*, 52 Ct. Cl. 271.

In conclusion, we commend the reasoning contained in the unanimous opinion of the Circuit Court of Appeals, with special reference to the following extract:

> "Whatever the right or claim of Williams was in name, the Government in pursuance of statutory power issued and delivered to him paid-up insurance evidenced by the certificate and promised to pay it upon the happening of several events, one of which has now occurred. *With the facts as they admittedly are by this demurrer the suit is simply against the United States upon its undertaking to pay money to the beneficiary.* As this undertaking is not shown by the legislative history leading up to the enactment of the statute under which it was authorized or by the terms of the statute itself to be a pension, we cannot hold that the Government's obligation as indicated by the certificate running to the grantee's beneficiary as well as to the grantee himself is a pension. Accordingly, being for a sum less than $10,000.00 the United States granted jurisdiction to the District Court to entertain this action."

We confidently submit that the authorities cited establish that the claim in suit is not a pension, that it is founded upon a contract express with the Government and an Act of Congress, and that the claimant had the right to resort to the District Court as a Court of Claims for redress when payment of her claim was refused.

Respectfully submitted,

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